MADURAI KAMARAJ UNIVERSITY
(University with Potential for Excellence)

DIRECTORATE OF DISTANCE EDUCATION

M.A. Criminology and Police Administration

SECOND YEAR

PAPER - II

Penology and Correctional Administration

Recognised by D.E.C

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Printed at Vimala Note Book
Copies - 500 Fresh print 2014

Dear Stundent

Greetings to you from the Faculty of Criminology and Police Administration of the Directorate of Distance Educational of Madurai Kamaraj University.

You have enroled yourself into an unique course, namely, M.A.Criminology and Police Administration. You Will Find this paper on Penology and Correctional Administration to be of great interest and value not from your examiniation point of view but also throughout your life, because you get an opportunity to understand the internal security system of the country.

This subject in particular, has been prepared with utmost care by not only referring to printed sources but more by collecting necessary information from the officials of the Tamil nadu Police Department & Prison Department. The Tamil Nadu Police website was also accessed fro certain information.

With tremendous advance in the sphere of Research and Development, the police Administration all over the world has so much advanced that it has how come to be called Police Science & Prison Science. Knowledge of researchers and experts is pouring into the field of police Science so much that every activity, every branch, every section of the police science is greatly benefited by it and has an ocean of information about it.

Some of the information given in this subject have been prepared with reference to Tamil nadu police on the concention that the Tamil Nadu Police provides a model prison. Allied activities like forensic science and crime investigation are almost the same for the entire police force throughout the world.

However, students of various states of india are advised to observe the police organization & Prison organizations of their respective states and use the details wherever necessary in the examination. You may have also provide real examples known to you in the context of the answers you write in the examination on this subject. Additional Information are invited from serving police personals and practicing criminal lawyers and professionals from other allied fields of activities.

Wish You **"All the Best".**

Faculity of Criminology

and police Administration

PENOLOGY AND CORRECTIONAL ADMINISTRATION

SYLLABUS

1. NATURE OF PUNISHMENT

a) Punishment : Meaning, aims, Philosophy of punishment

b) Punishment in Ancient and Medieval India

c) Theories of Punishment and Types Punishment

d) Objectives of Punishment

e) Sentencing - Principles, Policies and Procedure

f) Capital Punishment

RECENT APPROACHES TO PUNISHMENT

a) Role of Central and state govts. in Correctional administration.

b) Evolution of Correctional Philosphy

c) Correctional Manuals, rules etc.

d) Prisons Act, Prisoners act, Transfer of Prisoners Act, Juvenile Justice (Care and Protection) 2000, as amended in 2005 Act.

e) Jail Manual

f) Various Prison Reforms, Committees and Commissions.

2. CORRECTIONAL INSTITUTIONS

a) Institutionalization : Meaning and Purpose

b) Evolution and Development of Prison System in India

c) Classification system : Meaning and Significance

d) Adult Institutions : Central, District and Sub - Jails.

e) Juvenile Institutions : Observation Homes, Juvenile Court and Juvenile Welfare Board, Special Homes, Juvenile Homes, Borstal School.

f) Women Institutions : Women Prison ; Vigilance Home, Protective Home and short stay Home.

g) Open Prisons.

3. INSTITUTIONAL CORRECTION PROGRAMMES

a) Boarding, Lodging and Medical Care

b) Educational Programmes

c) Work Programmes

d) Self Governance and other activities

e) Prison Culture

f) Rights of Persons - Constitutional and Legal

g) U.N. Standard Minimum Rules for Treatment of Prisoners.

4. COMMUNITY BASED CORRECTIONS.

a) Probation : Concept and Scope

b) Probation : Historical Development in India.

c) Probation Laws

d) Probation Procedures : Pre- sentence Investigation Report, Supervision, Revocation etc.

5. PAROLE AND AFTER CARE

a) Parole : Meaning and Scope

b) Parole Provisions, rules and Supervison

c) Halfway houses, Organisation and significance.

d) Role of Voluntary agencies in Prevention of Crime, Institutioanl and non-Institutional, treatment of offenders and after care.

e) After care and Rehabilitation, Need, Importance and services in India.

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Model Question 244

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PART - 1

LESSON - I

INTRODUCTION

Punishment is given when an offence is committed by a person. Offence is defined by the Indian Penal Code. But Punishment is given by the Judge. The Punishment is not Precise. It is left to the discretion of the Judge. For example the offence murder may be punished by death, life imprisonment, Ten years of imprisonment with or without fine. "A" a person might have committed a "Murder". He might been awarded "Death" Penalty. "B" may have committed Murder, he may have been awarded Ten Years of imprisonment with a fine of Rs. 10,000. Why is the difference. It may be of interest to study about punishment. So punishment may be of different forms.

UNIT OBJECTIVES

To know about punishment, - Meaning - Aims and Philosophy of Punishment and objectives Punishment - Sentencing -Principles, Policies and procedure capital punishment - testing its effectiveness - etc.,

UNIT STRUCTURE

INTRODUCTION

UNIT OBJECTIVES

UNIT STRUCTURE

1.1 Punishment : Nature of Punishment.

1.2. Meaning, Aims and Philosophy of Punishment

1.3. Punishment in India - Ancient and Mediaeval

1.4. Theories of Punishment

1.5. Types of Punishment

1.6. Objectives of Punishment.

1.7. Sentencing - Principles, Policies and Procedure

a) Pre - sentencing report

1.8. Capital Punishment.

1.8.1. Jag - Mohan Singh and after

a) Testing the effectiveness of capital Punishment

b) Capital Punishment as a deterrent

c) Retribution

1.9. Summary

1.10 Key words

1.11. Answers to check your progress

1.12. Model Questions.

I.1. NATURE OF PUNISHMENT

Punishment: Meaning, Aims, Philosophy of Punishment

Criminology is a science. It has within its scope,

1. The process of making laws

2. The process of breaking laws: and

3. The process of reacting towards the breaking of laws.

These processes are three aspects of somewhat unified sequence of inter actions.

What is crime?

Certain acts which are regarded as undersirable are defined by the

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political society as crime. Some people persist in the behaviour and thus commit crimes.

Simply -When A is ruling B and his associates are criminal and when B is ruling A and his associates are criminal. You can understand by the political scenario.

Therefore the political society reacts by

1) Punishment

2) Intervention; and

3) Prevention

Thus criminology has three interrelated divisions. They are

1. The sociology of criminal law.

2. The sociology of crime and social psychology of criminal behaviour.

3. The sociology of punishment and correction.

The sociology of punishment and correction is an attempt at systematic analysis of policies and systematic analysis of the procedures for reducing the incidence of crime.

What we must do with apprehended criminals?

This study is called societal reactions to crime and criminality. Social scientists concentrated on understanding and explaining lawbreaking rather than on understanding and explaining the socisital reactions to law breaking. The societal reactions to law breadkling has not been organised. There are four general problems.

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The First problem is closely analogous to the problems of observing variations in the incidence of crime and delinquency.

These variations can be classified as purely puntive reaction. This may also be purely Interventionist Reaction.

Second general problem is efficiency. "It must be analysed whether the materials on the states effort to control crime are to be integrated. Is the crime rate really reduced when Police and Prosecutors enforce the law? Do crime rate go down when punitive police policies are used? So what is said to be "efficient" is often more a matter of policies than science.

A third general problem is that of establishing a relationship between varying reactions to "Law Breaking". on the one hand and existing knowledge about crime causation on the other. Changes in policies do not immediately follow new discoveries. More fruitful theories like "differential association" cannot be really used as a basis for social policy.

The Fourth general problem is "Why do the policies and methods for dealing with crime vary from time to time and from place to place?

Mark .C. Kennedy has noted penal sanctions arose in Western Europe in the Fifteentn century.

More specific problems are

1) Variations in the traditional modalities of punishment

a) Severity

b) Uniformity

c).Celerity (swift)

d) Certainty

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Variations in the specific methods of implementing the punitive reactions.

a) Death penalty

b) Corporal Punishment

c) Imprisonment

d) Fines.

3) Variations in specific methods of implementing the punitive interventionist reaction such as

i) Individual case-work and

ii) Community work with criminals

iii) Group Therapy

iv) Community organisation and

v) Restructuring the economic and political order.

4) Variations between the official or formal reactions to crime and the un official or informal reactions.

What is punishment?

Two essential ideas are contained in the concept of punishment as an instrument of public justice.

1. Punishment is deliberately inflicted by the officials of the state upon one who is regarded as subject to the laws of the states. Killing enemies and destroying their property during war is not punishment because the actions

are directed against persons who are not state subjects. The loss of status is also not punishment.

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2. Punishment involves pain or suffering produced by design and justified by some value. This is the conventional conception used in criminal law. If the pain and suffering is accidental it is not punishment.

For example if a surgical operation is performed on a prisoner to correct a physical defect it is not punishment, because the pain is not regarded as valuable or desirable. Likewise confinement of a psychotic person is not punishment because judges do not assume that the suffering will "teach" the psychotic not to repeat the psychosis.

Walter.C.Reckless says "It is the redress that commonwealth takes against an offending member"

Deliberately hurting criminals is an expression of an instinct of vengeance.

Three types of wrongs followed by three types of reactions.

1. Treason -when they occur the reaction was annihilation. The reaction rendered the offender non existent -closely related to war, social hygiene and sacrifice. The offender was regarded as an enemy and processed as an enemy. Offenders were thought to be polluted. In many societies witchcraft was followed by death which was designed to please the "Gods."

2. Injuries to private individuals -They provoked feuds between families. The origin of the system of payment of damages in civil courts.

3. Third Group of wrongs -Ridicule was the most powerful method of

(Space for Hints)

control and was generally sufficient to secure observance of Rules. If a young man killed his father, he was not punished by the other members of the family. Because the members of the family felt that since the family had already been weakened by the loss of one member, it would be foolish to weaken it still more by injuring the offender.

1.2.AIMS OF PUNISHMENT AND PHILOSOPHY OF PUNISHMENT

The aims of punishment is to control crime.

The aims of criminology and penology are to attain a crimeless state - which could be present only in imaginations. .

1. Deterrence -Fearful :-

i) Punishment should be imposed very soon and it should be severe.

ii) Pain which is imposed by punishment must be more than the pleasure derived by it.

2. In capable:

Keep the offender in prison. During this period he cannot commit crime.

3. Retribution:

By criminal acts the offender deserves punishment.

Look at the criminal. Look at the crime then impose punishment which meets both ends.

4. Rehabilitation:

The offender is sent back to the society to re-adjust him.

5. Equity :

The offender should pay back to the society which has been lost.

Punitive Reaction to crime gave rise to three schools of Penology.

They are

1. The Classical school

2. The Neo-classical school

3. The Positive -or Italian school.

These schools arose as a result of variation in reaction to crime.

1) The Classical school

Ceseare Beccaria made one of the first significant contribution. Rousseau; Montesquieu and Valtaire belonged to this school. They maintained the doctrine of psychological Hedonism; that is to say that the individual calculates pleasures and pains in advance of actions and regulates his conduct by the results of his calculations.

The basic principle or philosophy was that it is necessary to make undesirable acts painful by attaching punishments to them. These thinkers also wanted to make the amount of pain thus attached knowable to all, so that prospective criminals can make rational calculations. Thus our Indian penal code reflects only these classical school principle.

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The doctrine of the classical school was that the reaction to every crime should be administration of a measured amount of pain on the criminal by state officials.

Because the punishment must be one that can be calculated in advance it must be the same for all individuals. Jeremy Bentham, the great reformer of the criminal law in this period tried to extend. Hedonistic calculus by working out precise mathematical laws for inflicting punishment.

Generally speaking this doctrine disregarded a) Age (b) Sex (c) Mentality (d) Social status (e) and another relevant consideration -which we may think now as correct.

Example -The question of Individual responsibility was not considered -as in the past when offenders were annihilated.

The Neo-classlcal school

This school of thought arose at the time of French Revolution. These philosophers maintained that the classical doctrine was correct in general but it should be modified in certain details because "Children. and "Lunatics. cannot calculate pleasures and pains, and they should not be regarded as criminals and they should not be punished. Thus the practice of taking into account certain "Mitigating circumstances" came into existencre. Thus the reactions to crime was no longer purely punitive. Punishment was imposed on some and not on others. Recognition of exceptions meant that individual responsibility was to be taken into account. Thus there arose necessity for administrators of justice to consider the psychology and sociology of crime. This became the principle of the judicial and legal system of western civilization during the last century: The Penal code of India also took in its fold all these ideas and incorporated in appropriate places.

The Positive school

The positive school, denied that even sane and mature persons are individually responsible for their criminal acts, in contrast to the Neo-classical school. Members of the positive school reflected an essentially non-punitive reaction to any criminality. The adherents of this doctrine maintained that a crime is a natural phenomenon, just like a tornado, a flood a stroke of lightening. In self-protection the group might but criminals to death, but these precautions were not considered to be punishment. This idea into penal legislation are properly characterized as plea for "**Social defense**" against criminals.

Criminals who could be reformed were to be reformed, and those who could not be reformed were to be segregated or killed. Denial of personal responsibility for individual criminals blurs the concept of guilt and therefore it seriously flaws the accused person's right to fair trial, to counsel, to confront witnesses and to other safe guards of "Due Process of Laws" Jerome Hall in, "Science and Reform in Criminal Law?"

From these, three schools of Penology Two different reflections of-a-non-punitive reaction to crime appeared.

The first of these is Treatment by Individual case-work. This substituted psychological determinism for the biological determinism of the early positivists. This approach is based on the premises of the positive school but differs from it as to procedure.

The second is social psychological and sociological. Crime and criminality are seen as products of group.relations, not of individual choice or defect. For this reason, criminality cannot be treated by psychotherapy, it must be handled, as a problem of culture -bearing groups.

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1.3. PUNISHMENT IN ANCIENT AND MEDIAEVAL INDIA

In ancient India, there were Dharma shastras. Manu was the greatest lawgiver. Manava Dharma Sastra was the most important law book in ancient India. Dharam Sutras emanated from Vedic schools. The law books of Vishnu and Yajnavalkya became universally authoritative.

The Sastras showed that the judges were only the king. The criminal was brought before the king. Main crime was theft. Because at that time all things were based on agriculture. Theft of cattle and robbery was regarded as the chief crime. There were different kinds of theft according to Brahaspathi. He has treated theft as a form of violence. Violence was of four kinds. They were

1) Homicide

2) Theft

3) Assault on other's wife and lastly

4) Injury

Thieves were classified into different kinds. They were

1) open thieves

2) concealed thieves.

They were further classified by their "Modus operandi" ie skill and methods.

Manu recognized only Two Types of ordeals. Later it became Nine.

They are -

1. Ordeal by Fire
2. Ordeal by water
3. Ordeal by Balance
4. Ordeal by sacred libation
5. Ordeal by plughshare
6. Ordeal by dharma
7. Ordeal by grains of rice.
8. Ordeal by hot gold piece and lastly
9. Ordeal by poison

Ordeal by Fire

The accused had to walk through Fire to prove his innocent. In Ramayana, Sita had to walk through fire to prove her chastity.

Ordeal by water

The accused was thrown into the water after tying his hands and legs by rope. If he was not drowned he was held to be innocent and if he was drowned he was held to be guilty.

In murder cases, the murderer had to pay compensation to the relatives of the, murdered person.

For the offence of theft, the hands were Cut-off. (ie. Mutelation). Thus we see in king, Pandiya's case, he had his hand cut-off. His name became very famous he was known by the name "Porkai Pandiyan".

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Punishment in Mediaeval Period

When the Moghal rule was established over the major part of India naturally Mohammedan -criminal law supplanted the ancient Hindu criminal law. It was Mohammedan criminal law as expounded by the leading doctors of the sunni Mohammedans. Aboo Haneefa and his two disciples Aboo Yoosuf and Iman Mohammed that was introduced by the Moghal conquerors whose power reached its zenith under Akbar 1556-1605.

In the reign of Akbar, instructions were issued to the provincial governor asking him "to pursue what the witnesses deposed by manifold inquiries, by study of physiognomy and the exercise of foresight."

The Mohammedan criminal law classified all offences as incurring of one of these, classes of punishments namely:

1. Kias - the price of blood homicide.

2. Hud - specific penalty -Theft, Robbery etc.

3. Tazeer -or discretionary punishment.

Political offences were too vague and were put under the heading destruction of rebels without giving any further details. For theft hands were cutoff. Stoning was the punishment prescribed for illicit intercourse. For various types of robbery the punishment was mutilation or death or both.

It was undoubtedly very harsh and cruel in certain cases. Death sentence was awarded to a married man who had sexual intercourse with a woman other than his wife. The result was "as was remarked by Sir Stephen" a hopelessly confused, feeble, indeterminate system of which no one could make any thing at all.

1.4. THEORIES OF PUNISHMENT AND TYPES OF PUNISHMENT

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There is no constant desire to make all criminals suffer and that the system used for inflicting suffering on those criminals who were thought to deserve sufferirg has changed from time to time. The punitive reaction to law breaking has not been present in all societies. The extent to which official punitive policies are carried out in practice also varies from time to time, even within a given society.

A theory which precisely explains all of these variations has not been developed. However few theories are explained here.

Cultural consistency theory

This theory accounts for the many variations in the presence and implementation of the punitive reaction to law breaking. The societal reactions to law breaking and the methods used to implement those reactions show a general tendency to be consistent with other ways of behaving in the society.

First, when the criminals were disemboweled, hung in chains, branded, and in other ways tortured and mutilated, suffering was widely regarded as the natural lot of mankind. Torture merely increased the level of physical pain experienced in everyday life by working-class persons everywhere. Physical suffering has been reduced in most part of the world, and is now being reduced even more. Consider the conditions under which people earn their daily bread. Punishment "at hard labour" ingalleys, houses of correction and prisons might have been reasonable when most work was toil. Such punishment is no longer reasonable. Most workers outside prisons no longer sweat in a dawn-to-dusk tedium of toil. Thanks to labour unions, improved production technology, and increased governmental concern, they do comparatively

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easy Forty-hours-a-week shifts in relatively comfortable surroundings. Physical suffering by criminals cannot be harmonized with the general interest in reducing fatigue, disease, and poverty throughout the world.

Second, the price-system-with all its market implication -developed at about the time modern criminal law theory developed. Hence the monetary implications in the terms of imprisonment - "debt to society," "Pay the price". During the British period in India Trunk Roads River Dams, Government Buildings were built only by these schemes.

Just as a price was assumed to bear a relationship to the demand for a commodity, so it was assumed, punishment should bear a relationship to the demand for a crime.

But now more and more prices are being fixed by governmental boards, agreements among business, and negotiations between groups rather than by agreements between individuals. Accordingly, it is no longer reasonable to think of punishment in the framework of classical economics. A man can no longer be sent to prison to pay a debt, and released when the account is settled. There is no such account.

Third, the ideal of **"equal punishment"** for all criminals committing the same technical offence was stated at the time of French Revolution, when democracy meant the equality of all persons.

Our political leaders of democratic nations rarely talk about "Classless society" or Liberty, Equality, Fraternity.

The Notion that (1) there should be uniformity in punishment and (2) all crimes should be followed by pain -Both ideas developed when only one cure "Blood letting" was uniformly used by physicians for all kinds of diseases and all kinds of patients. We now know that this CURE was worse than

Check Your Progress

1. What is Punishment?
2. What are the aims of Punishment?
3. Explain ordeal by Fire and Water?
4. Explain Price system.?

disease itself. We know that it is neither necessary nor desirable to punish all criminals. Now it is not reasonable to assume that one person convicted of theft should be punished as severely as another person convicted of the same crime.

Fourth, in the last few generations punishment as a means of social control has dramatically declined in the home, the school and the church. When fathers were totalitarians school teachers authoritarian task masters and preachers spreaders of rumours about the horrors of hell, it was reasonable that state officials also should be champions of terror. Now the state's punitive policy is inconsistent with the practice of other social institutions and it is being abandoned. School discipline is much better now than it was when punitive methods were the order of the day.

Fifth -the more brutal punishments flourished at a time when the social distance between the punishers and the punished was great. Development of democracy reduced the social distance. There is keener sympathy for criminals.

Sixth and somewhat more specifically imprisonment as a method of implementing the punitive reaction has in the last two centuries been substituted for physical torture and death.

Seventh, both the punishments stipulated by statute and the punishments actually imposed tend to be more certain and severe for acts which endanger the values held in high esteem by law makers and other persons at power and these values change.

Erikson, has argued, that the "moral boundaries" of communities shift over time and as these boundaries change, the varieties of behaviour sanctioned, and the severity of punishment also change.

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The Scape -Goat Theory

Psychoanalysts have advanced a theory which correlates the many variations in the punitive reaction with variations in the alternative systems for satisfying "Aggressive and "Libidinal" instincts. [Charles Brenner].

The general NOTION is that

(1) these instincts are present in all persons.

(2) these instincts must be expressed in some fashion: and

(3) the criminal severs as a "Scape goat" for their legitimate expression.

Thus it is maintained that in punishing criminals, society expresses the same urges which are expressed, among criminals, in committing crime.

Karl Mennigner, one of America's leading psychiatrists had expressed "We need criminals to identify ourselves wish to envy secretly, and to punish stoutly. They do for us "the forbidden illegal things" we wish to do and like scapegoat of old, they bear the burdens of our displaced guilt and punishment -"the iniquities of us all".

One form of this theory holds that the urge to punish criminals is closely related to sexuality and that the variations in the punitive reaction to law breaking tend to follow the variations in social prohibitions against sexual behaviour. In societies in which sex taboos are few and lax, punishment is absent or lenient, in periods when sex and sexuality are loudly declaimed, punishment is frequent, open and severe: in periods when sex becomes more suppressed as a topic of public discussion punishment is suppressed or hidden. Thus we no longer openly whip or torture criminals but, instead, torture them secretly behind prison walls.

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A more popular version of this theory deals more directly with "Aggression". Again, the essential "notion" is that the human organism, because of unconscious conflicts, contains a fixed amount of aggression which must be expressed. It may be expressed in criminality, it may be expressed in punishment of criminals. Variations in the punitive reaction to crime then depend upon the availability of alternative outlets for aggression. It had been intimated by Paul Reiwald that the First World War (aggression) was a substitute for punitive aggression against criminals. Hence societies need criminals for emotional reasons, and they organise that fight against them in such a way that crime is actually maintained. .

Punishment of criminals, is considered a system for sublimation of aggression tendencies persons who are aggressive secure satisfaction in the punishment inflicted, and this satisfaction is socially proper, says **F. Alexander and H. Staub.**

The analogy here is with the psychoanalytic theory of the development of the individual. Society is said to have advanced through the same "Three stages" as are said to be present in the psychological development of human organism.

First there was in social life a stage in which there was "Free expression" of the instincts (ego) of sexuality and aggressiveness and this was the period of "no punishment."

Next, the expression of the instincts were repressed and hence the instincts obtained their outlet in "Super ego", directed against their original form, this was the period of severe and open punishment.

In the third stage there has been a further degree of repression, and an open expression of the "libidinal" and aggressive instincts is no longer toler-

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ated, even in the indirect form of punishment. Just as "libidinal" and aggressive instincts are said to be repressed and hidden in the unconscious of the individual, the societal expression of such instinct is repressed and hidden behind walls. "Inside the Prison"

* the objective equivalent of the unconscious

* the same process goes on unseen by consciousness and inaccessible to ego, interference -says Berg in "Psychology of Punishment".

Social Structure Theories

A few social scientists have attempted to relate many variations in the punitive reaction and its expression and implementation to variations in social structure. The variations have been accounted for by the availability of labour supply, the presence of the lower middle class, the division of labour and social disorganisation.

Punishment and Economic condition

"George Rusche", has advanced the thesis that the primary determination of the societal reaction to crime is the conditions of the "labour Market". He contends that when the labour market is glutted, and labour therefore is cheap, the reaction to lawbreaking tends to be **"punitive"**, but when the labour supply is scarce, and labour therefore is at a premium, the reaction becomes **"nonpunitive"**.

The basic assumption in this theory is that crime is a lower -class phenomenon, and that the societal reaction is a phenomenon of the upper classes, who have political power, and for that reason comprise a ruling class.

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When economic conditions are poor and the labour-market is glutted, the upper classes impose severe punishments upon the lower classes but when the economic need of the upper classes for labour cannot be satisfied, they impose few and mild punishment.

Actually the theory can be broken into two. The second is as follows: when the economic conditions are good, there is no economic need to commit crime, and the crime rate is low, but when there is widespread unemployment, the temptation to commit crime is great.

Punishment and the Middle class

This theory of punishment relates variations in the punitive reaction to the presence of a lower middle class. The Svend Ranulf summarised the theory in the following statement: The disinterested tendency to inflict punishment is a distinctive characteristic of the lower middle class, that is, of a social class living under conditions which force its members to an extraordinary high degree of self-restraint and subject them to much frustration of natural desire".

This statement actually has three component parts. They are :-

1) The punitive reaction to lawbreaking grows out of the moral indignation of the public, it does not grow out of the indignation of the person who has been injured by a crime.

2) Moral indignation is found almost exclusively in the lower middle class and is the product self-imposed frustration among members of this class.

3) The punitive reaction increases in frequency and severity when the lower middle class is in control and decreases when the lower middle class loses power.

In connection with the second point, it is assumed that moral indignation -which is the emotion behind the disinterested tendency to inflict punishment and is a kind of disguised envy-is caused by the repression of natural desires. The natural desires of lower middle-class persons are repressed, the members of the class are morally indignant when crime occurs, and lower-middle class persons react punitively to lawbreaking. In this view, theory is not a **"social structure theory"** but, a variation of the scape-goat theory.

Punishment and the Division of Labour

Emile Durkheim, one of sociology's pioneers, attributed fluctuations in the punitive reaction to change in the **"division of labour"** of society.

His theory may be stated briefly in **"three propositions"**.

1) Offences which attack the collective values of a society elicit more severe punitive reactions than those which attack individual values.

2) Punishment for crime may be ordered by tribunals made up of all the people, they are imposed primarily for the purpose of reinforcing collective values, not for vengeance, intimidation or reformation. "We must not say that an action shocks the common conscience because it is criminal, but rather that it is criminal because it shocks the common conscience.

3) As the principle of social organisation changes from mechanical solidarity to organic solidarity, the punitive reaction to **"law breaking"** tends to disappear and in its place is substituted **"restitution and separations"**.

Punishment and Social Disorganisation

Pitivim.A. Sorokin has stated a social disorganisation theory, somewhat consistent with Rusche's theory and somewhat inconsistent with

Durkheim's. He refers to variations in the "ethico-juridical heterogeneity and antagonism" of social groups, and argues that whenever this heterogeneity increases, whatever the reason for the increase, the frequency as well as the severity of the punitive reaction to lawbreaking increases. The greater the increase .in the heterogeneity and antagonism the greater is the increase in the punitive reaction as formalised in the imposition of punishments by one part of the group upon the other. The ethico juridical heterogeneity and antagonism is increased by social crises, including those affecting the economy.

In General Theories of Punishment are as follows.

1. Retributive
2. Preventive
3. Deterrent
4. Reformative

Explanation of these theories

1. Retributive Theory

Retribution is a very important feature of the administration of criminal justice. The basic principle of this theory is that the offender must receive as much pain and suffering as inflicted by him on his victim and thereby restore the social balance disturbed by the acts of the criminal.

According to this theory society has the right and the duty to vindicate the wrong done to it and it must impose a punishment which befits the crime. Even in the formulation of the code of Hammurabi an eye for an eye and a tooth for a tooth, it has been accepted by the general public that the criminal deserves to suffer. The suffering is imposed by the state in its corporate

(Space for Hints) capacity. **Sir James Stephen**, who had given us Indian Evidence Act, a scholar, stated "Criminal procedure is to resentment what marriage is to affection namely the legal provision for an inevitable impulse of human beings",

Immanuel Kant an eighteenth century German philosopher expressed "Judicial punishment must in all cases be-imposed on him only on the ground that he has committed a crime".

It has been urged on behalf of the society that unless the criminal is punished, the victim will seek individual revenge, which would mean lynch-law.

The extreme limit to which the retribution element should be carried has also been expressed by Immanuel Kant... "Even if the society were to dissolve itself by common agreement of all its members the last murderer remaining in prison must first be executed so that everyone will duly receive what his actions are worth and so that the blood guilt there of will not be fixed on people because they failed to insist on carrying out the punishment, for if they fail to do that, they may be regarded as accomplices in his public violation of legal justice".

2. Preventive Theory

The object of criminal justice is prevention of crime. Justice Holmes pointed "there can be no case in which the law-makers makes certain conduct; criminal without his will, thereby showing a wish and purpose to prevent that conduct.

The law threatens certain pains if you do certain things, intending there by to give you a new motive for not doing them. Thus it is said criminal law is for gentleman. Why? Criminal law lists out what is crime and correlative punishment. After studying it a gentleman will not commit crime.

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Then what about criminal procedure? It is for criminals. After committing a crime, the criminal wants to escape from punishment. So he studies criminal procedure. Law says punishment cannot be given without following the procedure law. If the procedural law is followed wrongfully by the authorities criminal will escape from punishment.

So the saying is "Criminal law is for Gentleman and the procedure is for criminals."

3) Deterrent Theory

Punishment has deterrent effect over the criminals. The purtishment is imposed as a means for improving social behaviour. It is designed to deter future crime. The general deterrence principle in economic terms to "pay the price of a crime?" The hedonistic assumption is that the people regulate their behaviour by calculation of pleasure and pain. The potential offender evaluates all possibilities and chooses the activity which" maximises his utility.

The highest punishment of death is justified if the offence is very grave and such punishment is called for to deter other people from committing similar offences.

4. Reformative Theory

It is said that punishment reforms criminals. How? It does this by creating fear of repetition of the punishment. This presumed value of inflicting physical pain on criminals was called Reformation. It suggested that hurting criminals changes them into noncriminals. But this value is called now by "Specific Deterrence".

When a small boy touches a hot stove he is painfully burned, and in that way learns to avoid hot stoves.

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The behaviour of school children in modern schools is much better than in the schools of a century ago, when corporal punishment was extremely frequent. A mild punishment may promote learning and a severe punishment may cause terror which will interfere with learning process.

1.5.TYPES OF PUNISHMENT

The punishment to which offenders are liable under the provisions of Indian Penal Code; Section 53. Punishment are as follows;-

1. Death

2. Imprisonment for life.

3. Imprisonment which is of two descriptions namely

    1) Rigorous -that is with hard labour

    2) Simple

4. Forfeiture of property.

5. Fine.

Lastly warning and sureties for good behaviour are other forms of punishment.

Solitary confinement

Section 73 and Section 74 of the Indian Penal Code deals with this. It may be for a period less than fourteen days.

1.6. OBJECTIVES OF PUNISHMENT

The objectives of punishment are to bring about reform of the criminal. **"As you sow, so shall you reap"**. Through punishment Nemesis brings home

to the mind of the Wrongdoer that a good act is rewarded, and a bad act meets its merited fate.

The main ends of punishment, according to **"Jeremy Bentham"**, are prevention and compensation. According to Holmes prevention is the chief purpose of punishment. We wanted to bring a crimeless society through punishment and reform.

Lord Jesus is the first and foremost reformer. When a crowd wanted to kill a woman by stone, Lord said a man who had not sinned can throw the first stone over her, All the person went away. Only the woman was standing. Lord told her that her sin was forgiven and asked her not to sin anymore. Thus he brought reform to the society.

Punishment if just and good must make the wrong doer compensate with interest being meant as end by way of penalty.

Punishment often has unanticipated effects.

1. Punishment isolates the individuals who are punished.

2. Punishment develops caution.

3. Punishment often gives high status. Eg. "Tada" -Ganesan,underworld uncrowned Emperor "Mastham" and so on.

4. Punishment generally stops constructive efforts.

5. Punishment creates other unanticipated attitude -lack of respect for law, lack of patriotism, lack of willingness to sacrifice so the aim should be to solve all these problems.

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1.7. SENTENCING :- PRINCIPLES, POLICIES AND PROCEDURE

The object of a criminal trial is to determine whether the accused person is guilty of the offence he is charged with and to prescribe suitable action in relation to him if proved guilty on the.basis of an elaborate system of substantive and procedural criminal law.

The determination of an appropriate sanction out of many permitted by law in particular situation is of an enormous consequence to the individual offender as it is to the society at large.

The offender's life, liberty, property and his entire future hinge on the outcome of sentencing process, it is also bound to have some impact on the social interests, what ought to be the primary concern of the criminal law.

The sentencing process involves the determination of the appropriate action both qualitative and quantitative terms. The significance of the sentencing process is to be appreciated in the context of **"individualisation"** to criminal justice ie., the punishment should befit the offender.

The first movement towards rational sentencing was launched by the classical school of England.

Jeremy Bentham sought to achieve some element of rationality in the penal policy by advocating punishments of different magnitudes for different kinds of offences. He provided the following guidelines.

1. That the value of the punishment must not be less in any case than what is sufficient to outweigh that of profit of the offence.

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2. When two offences come in competition the punishment for the greater offence must be sufficient to induce a man to prefer the less.

3. The punishment should be adjusted in such manner to each particular offence.

4. The punishment ought in no case be more than what is necessary.

Benthem laid down that the quantum of punishments prescribed should be inversely proportional to the possibility and time factor involved in the infliction of punishment.

Benthem said that quantum of punishment should vary according to the offender's capacity to suffer. He enumerated 32 variables of capacity for suffering, ranging from sex, age, physical and mental health to climate, religion and lineage which in the words of Nigel Walker, was astonishingly modern piece of writing for an eighteenth century penologist.

The gravity of an offence was generally assessed in terms of social danger, alarm, social disapproval, harm and wickedness involved in it.

The first issue which a court has to decide after finding an accused person guilty is to determine whether the offender needs to be dealt with through "individualisation" or by penal section. If the choice made is "individualisation", the further issue is to choose "Probation or Suspended sentence."

The criminal procedure code incorporated some provisions which can be put to use in order to personalise the sentence from various angles. Sections 235(2) and 248(2) are in these right directions.

These provisions reflect the contemporary thinking that sentencing is an important stage in the administration of criminal justice and it should be

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given the due place in the system which it deserves. Thus it was used in a double murder case Santa Singh -Vs - State of Punjab (1976) 4 SCC.

The law commission identified the various considerations to be made in its Forty Seventh Report and they have been cited with approval by the supreme court in Mohd. Giasuddin-Vs State ofA.P. (1977) 3 SCC 287.

1.7.(A) PRE-SENTENCING REPORT

The significance and importance of the pre-sentence report has been described by Sheldon Glueck thus.

"A pre-sentence investigation is helpful even if one clings to the conviction that the chief aim of the criminal law is painful punishment with a view to general and specific deterrence; all the more necessary it is if one believes its main objective to be the reform and the rehabilitation of the offender".

Not only is the pre-sentence report valuable as a basis for sentence and treatment in the individual case but the accumulation and study of many pre-sentence reports can lead to a realistic, rather than a merely theoretical, re-examination of the entire philosophy of punishment". [41. Journal of Criminal law and Crime 717].

The court not only receive and use the information given in the reports but they may also seek advice from experts like Psychiatrists and Probation officers regarding the desirability of a particular sentence keeping in view its likely impact on the offender. The information is of special significance in the case of juveniles.

Nigel Walker emphasises the value of the pre-sentencing reports.

"Quite apart from the actual value of the information and advice, this

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trend is healthy, because it means departure in practice from the legal convention that the disposal of the offender is the sole responsibility of the persons who preside over the trial of his guilt".

The congress of the "International Penal and Penitentiary Commission" in Brussels held in 1951 recognised the utility of pre-sentencing reports. Some of the resolutions are as follows,-

1. In the modern administration of criminal justice, a pre-sentence report covering not merely the surrounding circumstances of the crime but also the factors of the constitution personality, character and socio-cultural back ground of the offender is a highly desirable basis for the sentencing, correctional and releasing procedure.

2. The scope and intensity of the investigation and report should be adequate to furnish the judge with enough information to enable him to make a reasonable disposition of the case.

3. In this connection it is recommended that criminologists in various countries conduct researches designed to develop prognostic methods (prediction tables)

4. It is recommended that professional preparation of judges concerned with peno-correctional problems include training in the field of criminology.

In India, however, there is no such provision in the relating to the administration of criminal justice except those relating to juvenile offenders. The issue was considered by the **"Indian Jail committee"** which opposed the kind of arrangement as in U.S.A.

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"In this country we do not think that such a system would have any chance of success. The many religious and social cleavage which exist in India would inevitably lead to an unevenness in the officer's report even if direct corruption could be guarded against and we do not think that it would be wise to imitate the American system in this report" [Quoted in Kripal Singh Chhabra : Quantum of punishment in Criminal law in India, 1970. Page 179].

Religious and social cleavages are a bit obsolete now. The arguments bases on the abuse of authority may he advanced even in the case of court personnel including judges and public prosecutors. However the committee did not deny the potential utility of the pre-sentence report.

In the absence of any pre-sentence reports, courts in India, have to fix the punishments on the basis of whatever inadequate information they receive about the offender in the course of the actual trial.

The Supreme Court has lamented more than once over this kind of unsatisfactory state of affairs. For example in P.K. Tejani-Vs-M.R. Dange (1974) .1. SCC.167.

Justice Krishna Iyer observed

"Finally comes the post-conviction stage where the current criminal system is the weakest. The courts approach has at once to be socially informed and personalised".

The supreme court observed in Ramashrays Chakrvarti -Vs -State of MP (1976) .1. SCC 281 .

"Trial courts in this country already overburdened with work have hardly any time to set apart for sentencing reflection. This aspect is missed or deliberately ignored by the accused a possible plea for reduction of sentence

may be considered as weakening his defence". In a good system of administration of justice pre-sentence investigation may be of great sociological value.

Under the Criminal Procedure Code the Sessions Court and the magistrates trying warrant cases have to give hearing to the accused on the question of sentencing after finding him guilty of the offence. Though the system based on pre-sentence report is yet to come the new provisions may atleast give some scope to the sentencing issues in the criminal courts in India.

The nature and scope of the provisions of Section 235(2) which deals with presentence hearing was explained by the Supreme Court in Santa-Sing-Vs- State of Punjat(1976) 4 Scc 190. In this case accused committed double murder. On the date of judgement accused person's advocate did not attend the court. The accused was convicted. The supreme court held that the provision was mandatory and failure to give a hearing to the accused before the sentence is pronounced vitiates the sentence.

After the primary decision is made the court has to apply its mind to choose one of the alternatives available in the selected approach. ie individualisation or punitive approach.

The judge. has got a wide discretion in the matter of inflicting punishments on the offenders. The court should maintain a proportion between the offence and penalty and should not inflict the maximum punishment on every offender without any regard to the seriousness of the offence committed.

While awarding punishment the judge should also take into consideration the circumstance under which the offence was committed and the fact whether the criminal was a first offender or a habitual offender.

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The sentence should not be disproportionate to the gravity of the offence. Where a man has shown from his past conduct that he intends to adopt a criminal career three things should borne in mind by the judge.

Firstly, it is necessary to pass a sentence upon him which will make him realise that a life of crime becomes increasingly hard and does not pay.

Secondly, the sentence should serve as a warning to others who may be thinking of adopting to criminal career.

Thirdly, the public must be protected against people who show that they are going to ignore the rules framed for the protection of the society.

1.8.(F) CAPITAL PUNISHMENT

The sentence of death is called capital punishment. The sentence of death is the extreme penalty of law and naturally stands in the forefront of the category of punishment. The question whether the state has the right to take away a man's life which is not within anybody's power on earth to give, has never been settled between the jurist and the moralist.

Reformists are always of the view that it is barbarous relic of the past when the primitive idea of vengeance underlying the expression "eye for eye" "tooth for tooth" or "life for life" was prevalent.

On the other hand state authorities are of the view that the retention of the death sentence in the statute books alone deters criminals from doing most henious acts and enables the state authorities to maintain law and order in the land.

Respect for human life is maintained in society to take away forcibly by law the life of one who has wilfully murdered another.

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Under the Indian Penal code death sentence is prescribed in the following cases.

1. Treason

1. Waging war against the Government [Sec. 121]
2. Abetment of Mutiny [Sec. 132]
3. Perjury resulting in conviction and death of an innocent person [Sec. 194].
4. Murder [Sec. 302]
5. Abetment of suicide of a minor or an insane person [Sec. 305]
6. Attempted murder by life convicts. [Sec. 307 CI. 2]
7. Dacoity with murder [Sec. 396]

When incorporating this extreme penalty of law in the Penal Code the draftman said that it ought to be used only very sparingly. It is provided by the code of criminal procedure that " When any person is sentenced to death, the sentence shall direct that he be hanged by neck till he is dead" [Sec. 354 (5)]

1.8.(1) JAG-MOHAN SINGH AND AFTER

The constitutional validity of awarding death sentence under Section. 302 I.P.C. was canvassed in **Jag-Mohan Singh** -Vs- State of U.P. [AIR 1973 S.C. 947] and the supreme court held the section valid.

The section was challenged as contrary to Art. 14, 19 and 21. In this case the appellant had armed himself with gun and was lying in wait for the victim to pass. The murder was entirely motivated by ill feelings nurtured for

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years. The offence was premeditated. On seeing the appellant the deceased started running away but he was chased and done to death. In these circumstances the learned sessions judge held that the appellant deserved the extreme penalty of law which sentence was confirmed by the High court.

In appeal before the supreme court it was urged first that death sentence which puts an end to all fundamental rights guaranteed under clause (a) to (g) of sub-clause, (1) of Article 19, is unreasonable and not in the interest of the general public.

Secondly it was contended that the discretion invested in the judges to impose capital punishment is not based on any standard or policy required by the Legislature for imposing capital punishment in preference to imprisonment for life is hit by Article 14 of the constitution, because two persons found guilty of murder on similar facts are liable to be treated differently, one, forfeiting his life and other suffering merely a sentence of life imprisonment.

Finally, it was also contended that the provisions of the law do not provide a procedure for trail of factors and circumstances crucial for making the choice between the capital penalty and imprisonment for life. In the absence of any procedure established by law in the matter of sentence, the protection given by Art -21 of the constitution was violated and hence for that reason also the sentence of death is unconstitutional.

Rejecting these contentions and upholding the sentence of death the court held speaking through J. Palekar, that even assuming that the right to live is basic to the freedom mentioned in Article 19 of the constitution and that no law can deprive the life of a citizen unless it is reasonable and in public interest, it will be difficult to hold that capital punishment as such is unreasonable, or not required in public interest.

As is well known, the subject of capital punishment is a difficult and controversial subject, long and hotly debated. It has evoked strong views. In that state of affairs, if the Legislature decided to retain capital punishment for murder, it will be difficult for the Supreme court in the absence of objective evidence regarding its unreasonableness to question the wisdom and propriety of the Legislature in retaining it. It cannot therefore be held that capital punishment as such is either unreasonable or not in the public interest, offending Art. 19 of the constitution. .

Section 302 I.P.C. is not vitiated by tie vice of excessive delegation of Legislative function merely because it does not provide in what cases the judge should sentence the accused to death and in what cases he should sentence him to life imprisonment. The structure of our criminal law underlines the policy that when the Legislature has defined an offence with sufficient clarity and prescribed the maximum punishment therefore, wide discretion in the matter of fixing the degree of punishment should be allowed to the judge. The policy has its origin in the impossibility of laying down standards. The discretion in the matter of sentence is liable to be corrected by superior courts. The exercise of judicial discretion on well recognised principles is on the final analysis the safest possible safe-guard for the accused.

Equally untenable is the contention that Section 302. I.P.C. confers uncontrolled and unguided discretion to the judges and that therefore it is hit by article 14 of the constitution. If the law has given to the judge a wide discretion in the matter of sentence to be exercised by him after balancing all the aggravating and mitigating circumstances of the crime, it will be impossible to say that there would be at all any discrimination since the facts and circumstances of one case can hardly be the same as the facts and circumstances of another. Article 14 of the constitution can hardly be invoked in matters of judicial discretion.

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The court also held that Section 302 I.P.C. does not contravene Article 21 of the constitution in so far as the trial is held as per provisions of the Indian Evidence Act and Criminal Procedure Code which are undoubtedly part of the **"procedure established by law"**. The guilt and punishment of the accused is decided by the judges as per Sections 306(2) and 309(2) of the Criminal Procedure Code.

The decision in **Jag Mohan Singh's** case was affirmed by a Fuller Bench of FIVE Judge's in Bachan Singh-Vs-State of Punjab [AIR 1980 SC 898] although the court held that the death sentence should be imposed only in "Rarest of Rare cases" such as cases of extreme brutality and exceptional depravity. In this case the accused **"Bachan Singh"** was convicted and sentenced to death under Section 302. I.P.C. for the murders of Desa Singh and Durga Bai and Veeran Bai, in a most cruel and henious manner.

Criminal law and the Death Sentence

In Attorney General of India -Vs -Lachma Oevi -[AIR 1986 SC 4671 the Supreme Court held that the execution of death sentence under Section 354 (5) of Cr. P.C by "Public Hanging" is barbaric and violative of Article 21. The Court said "We would like to make it clear that the execution of death sentence by public hanging would be barbaric practice clearly violative of Article 21 of the constitution and we are glad to note that the Jail Manual of no state in this country makes provision for execution of death sentence by "Public Hanging" which we have no doubt is a revolting spectacle harking back to earlier centuries. The direction for execution of the death sentence by public hanging is to our mind, unconstitutional and we may make it clear that if any jail manual were to provide public hanging we would declare it to be violative of Article 21 of the constitution.

In this connection it has to be noted that in Deena-Vs-Union of India [1983 Cri. L.J 1602 SC] the Supreme Court has held that the execution of death sentence by hanging the convict through rope as provided for under section 354(5) of the Criminal Procedure Code is valid.

The method prescribed by Section 354(5) of the Cr. P.C. for Executing the death sentence does not violate the provision contained in Article 21 of the constitution. It is clear that neither electricution, nor lethal gas nor shooting, nor even lethal injection has any distinct or demonstrable advantage over the system of hanging. Therefore, it is impossible to record the conclusion with any degree of certainty that the method of hanging should be replaced by any of these methods. Evidence shows that the machanics of the method of hanging has undergone significant improvement over the years and if the expression is not inapt in the context, hanging has been almost perfected into a science.

1.8.(A) TESTING THE EFFECTIVENESS OF CAPITAL PUNISHMENT

The most popular arguments made in favour of death penalty are:

(1) It is more effective than any other penalty in deterring from murder.

(2) It is necessary in order to prevent the public from lynching criminals.

(3) It is the only certain penalty.

(4) It is more economical than imprisonment.

On the otherhand those who oppose the death penalty argue that th death penalty is not more effective than imprisonment as a deterrent, that th abolition of the death penalty does not promote lynchings, that it reduces th

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certainty and speed of pupishment, that by breaking down respect for human life it tends to promote murder that errors of justice are irreparable and that it has undersirable effects on the prisoners and the staff in institutions in which it is inflicted.

Under the leadership of Romilly, Bentham, Peel, Mc In Tosh, Montegu Cruickshank, and others, and as the power of the common people increased, the use of capital punishment decreased.

During the course of the last century a distinct trend away from the death penalty has occurred. The Economic and Social Council of the United States, as well as the General Assembly has several times passed resolutions encouraging abolition, of death penalty. Sweden in 1975 became the tenth nation in the world to eliminate the death sentence from its law books. Canada became the eleventh in 1976.

1.8.(B) THE DEATH PENALTY AS A DETERRENT

First: The most common method of testing the deterrent effect of the death pcnalty is to compare the homicide rate in states which have abolished the death penalty with rates in states which retain the death penalty.

William C. Bailey studied the number of first-degree murder committed to Americarl penal institutions in 1967 and 1968 and found that the murder rate is higher in the death -penalty states/ than in the abolitionist states and Also that the rate is consistantly higher in retentionist states than in their contiguous abolitionist neighbours. Thus **William.C.Bailey** writes "Murder and Death Penalty" in the Journal of Criminal Law and Criminology 1974.

The composition and customs of the population are much more important than the presence or absence of the death penalty in determining homicide rates.

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A second method of testing the deterrent effect of death penalty is comparison of crime rates just before adjust after one or more executions has takenptace. If death: penalty has any deterrent value, it presumably lies more in knowledge about actual executions than in awareness of the legal possibility of execution. Areas in which murderers are actually executed should be compared with area in which the law prohibits such executions. Four cases were selected because the sentencing was given great publicity in the newspapers. No significant increase or decrease in the murder rate occurred, there was no pattern that would indicate deterrences.

The third method for testing the deterrent value of the death penalty is by comparing in the states which have abolished the death penalty, the homicide rates before and after the abolition. The general conclusion from such comparison is that the states which abolished the death penalty have had no unusual increase in homicide rates. Eleven states abolished the death sentence only to restore it after a few years, on the ground that the murder rate had increased greatly after the abolition.

Comparison of the "before and after" homicide rates of European countries which have abolished the death penalty also shows that the presence or absence of the death penalty has no perceptible effect on the incidence of murder.

The available statistics do not justify an absolute conclusion regarding the value of the death penalty as a deterrent. The argument that the death penalty is an effective deterrent over and above the imprisonment is not substantiated by the data available.

The Death penalty and Certainty of Punishment

The advocates of the death penalty argue that it is more certain than

imprisonment because imprisonment is frequently terminated by escape, pardon or parole. Actually, the death penalty is very uncertain because it is so severe and repulsive that is seldom imposed even when it is authorised. For this reason, the deterrent effect of this sanction is difficult to measure.

In countries where jury system is followed the jurors are less willing to convict and witnesses less willing to testify when the penalty is death than when it is less irreparable penalty.

The uncertainly of the death penalty also is indicated by the fact that many of the persons sentenced to death are not executed.

The Death Penalty and Financial Economy

The death penalty often is defended on the ground that it is less expensive than life imprisonment. The per capita cost of imprisonment is about ten thousand dollars per year in America, and the life imprisonment may amount to an average of twenty years, making a total of two hundred thousand dollars. But there is some doubt as to whether execution actually is cheaper than imprisonment.

First the trial of death penalty cases are ordinarily much longer than trials of other cases.

As many as a thousand Jurors may be examined before twelve are chosen, and a year or more intervenes between arrest and sentencing.

Second, although the maintenance cost per prisoner may be high, this does not mean that it would increase appreciably if those now executed were committed to prisons.

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Third, in considering the cost of executions, the expenditure for death houses and for the closer custody which must be maintained are usually not computed.

If financial economy were the only issue, and if citizens could be killed cheaply, then it would follow that we should kill insane and mentally retarded persons, as well as, all criminals whose institutional maintenance would cost more than their execution.

1.8.(C) RETRIBUTION

One argument advanced infavour of capital punishment is that the criminal should die because he has committed a terrible crime and that only his death will satisfy the public and prevent them from taking the law in their own hands.

Social Solidarity

The Execution constitutes a spectacular exhibition which unifies society against crime.

Social solidarity achieved during war and emergency also. Therefore murderers need not be murdered.

Protection

Death penalty protects society from dangerous criminals by insuring that the criminals neither allcwed to commit other crimes nor spread their undesirable hereditary traits.

Irreparability of Error

Those who advocate capital punishment consider wrongful conviction as only a remote possibility. But although most mistakes are prevented by the

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judicial system or by executive clemency, some do occur, due to mistaken identification, inadequate circumstantial evidence, framed and simulated evidence, perjury unreliable expert evidence, over looking and suppressing of evidence, and excessive zeal on the part of investigators and prosecutors. In a forty-year period 12.3 percent of the 406 persons sent to New York's "sing sing" prison for execution were found upon reconsideration to have been sentenced in error.

1.9. SUMMARY

We come to understand that the individual calculates in advance, the pleasure he will derive by doing a crime. For example "A" the accused has calculated his pleasure in advance before committing a theft of Rs.5000/- So commits the crime of theft. He is also able to calculate the pain that will be inflicted by the criminal administration in placing him in prison for a period of three months. There will be shelter for him, food for him and even medical treatment if he is found to be ill. This is known as pleasure and pain Principle. This is the classical school of thought of Penology.

We are ashtonished to see the school of thought about crimes and punishments. Our main aim in studying criminology is to have a crimeless society in the whole world. Imagine how the world would be if there is no crime at all. Imagine a sea without no waves. Human beings want to be happy, they do not want to have pain.

Check Your Progress

5. Explain the Scape - Goat Theory.
6. What do you mean by Retributive Theory.
7. What do you mean by Reformative Theory.
8. What do you mean by social Solidarity.

1.10. KEY WORDS

1. Punishment - Legally inflietad Pain
2. Celerity - Swift
3. Capital Punishment - DeathPanalty

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4. Retributive - Retaliation - Revenge.

5. Deterrent - a warning / hindering

6. Pre - Sentencing Report - a report about the person who have committed a crime before imposing punishment.

1.11. ANSWERS TO CHECK YOUR PROGRESS

For Question No. 1. Refer Para. 1.1

For Question No. 2. Refer Para. 1.2

For Question No. 3. Refer Para. 1.3

For Question No. 4. Refer Para. 1.4

For Question No. 5. Refer Para. 1.5

For Question No. 6. Refer Para. 1.6

For Question No. 7. Refer Para. 1.7

For Question No. 8. Refer Para. 1.8

1.12. MODEL QUESTIONS

1. Explain the work of Classical School

2. Explain the work of Positive School

3. Examine the cultural consistency Theory.

4. Explain scape - Goat Theory.

5. What are the uses of Pre - Sentencing Report

6. Capital Punishment - Can you test the effetiveness.

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Suggested Books for further Readings

1. Crime in India (2000)
National Crime Record Bureau.
Ministry of Home Affairs
New Delhi.

2. Rao. V.G. (1981)
Dynamics of Crime

3. Devasia V.D. and
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Criminology, Victimdlogy and Corrections
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Critical study of Criminology and Penology
Allhabad Agency, Allahabad.

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Central law Pulications, Allahabad

6. Criminal Justice Situations and Decisions (1979)
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1974. Criminology 9th Ed. Philadelphia
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8. Contemporary Corrections
Paul. W. Tappan

LOSSON II

RECENT APPROACHES TO PUNISHMENT

INTRODUCTION

Hate the crime and not the criminal. If there is no criminals the society will be divided. Because there are criminals the society express their solidarity among the People. Take for example the Gang Rape committed by four persons - on the Delhi medical student "Nirbhaya" (the name given by Newspapers) - all the people of this nation gave their voice against the criminals. Why people are united against crime? We may say that they all fight against crime? Criminology studies about reaction to crime for breaking the law by the law It self and reaction of the people in general against the so called crime and the reaction of the people against it. Now all over the world the tendency is to treat the criminal as if he is a Patient. The offender is sent to peison not "for punishment" but "as punishment". Why this change? Is it a new welcome for good, or a new trend in penal Philosophy.?

UNIT OBJECTIVES

To know about the trend in penal Philosophy

- Reformation of the offender - Componsation of the Victim - Plea bargaining Principles. Restorative Justice - Restitution - Evolution of Correctional Philosophy - Prison - Prison Reform - Juvenile Reformatory - Specialisation of Prison - Prison Reforms in India.

(Space for Hints)

UNIT STRUCTURE

INTRODUCTION

UNIT OBJECTIVES

UNIT STRUCTURE

2.1. Restorative Justice

2.2. Mediation

2.3. Restitution

2.4. Role of central and state Governments in correctional administration.

2.5. Protective Home

2.6. Evolution of Correctional Philosophy.

  2.6. (1) Orgin

2.7. Deterrence

2.8. Prison and Prison Reforms

  2.8.1. Penitentiary Act. 1779

  2.8.2. Early American Prison.

  2.8.3. The Pennsylvania System

  2.8.4. The Auburn system.

  2.8.5. Irish System.

2.9. Juvenile Reformatories and Industrial schools.

  2.9.1. Specialisation of Prison

(Space for Hints)

2.10. Correctional - Manuals - Rules - Etc.

2.10. (a) Position of Prisons in India

2.11. Various Prison Reforms

2.12. Summary

2.13. Keywords

2.14. Answer to Check your Progress.

2.15. Model Questions.

In India the victim and his advocate, the Public prosecutor seek severe punishment for the accused. .

Is this an end? whether the victim is satisfied? The victim is unsatisfied even if the accused or the offender is punished. It has not restored their loss. It has not relieved their pain. It has not removed their fear.

By putting the offender in prison, he is incapacitated from committing new crimes. How long this trend must go? Until we learn to generate change in the offender. **"Compensation"** : So we have in India rightly introduced Section 357 in our Criminal Procedure Code" compensation to the victims?" It is a right step towards right direction. This section is independent. In cases where the court feels that compensation must be paid to the victims, court can order compensation to the victim. The offender had to pay compensation to the victim of the crime

The accused shot the victim on his right leg causing serious injury. The accused was awarded sentence of rigorous imprisonment for life and fine of 30,000 Rupees in the case of Bipin Bihari-Vs-State of M.P. [2005 Cri. L.J. 2048].

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In this instant case the Madya Pradesh High court referred the case of Sarup Singh- Vs-State of Haryana [AIR 1995 S.C. 2452]. In Sarup Singh's case the Supreme court while reducing the sentence for the period already undergone by an accused of an offence under Section 304 part II. I.P.C. directed to pay a sum of rupees 2000/- by way of compensation. The High court added "We have enhanced the amount of compensation taking into consideration the gravity of injury, the strata to which the accused belongs, the milieu in which the crime has taken place and further keeping in view the cry of the society for the victims at large. The entire amount shall be paid to the injured on proper identification.

2.1.RESTORATIVE JUSTICE

Victim-.offender mediation is one of the ways which restorative justice is carried out. Restorative justice sees crime as a violation of human relationship. The New look is crimes are committed against victims. Therefore restorative justice tries to attend the needs of the individual victim and the community that has been harmed. The accused is given an opportunity to repair the harm they have caused.

Restorative justice responses to crime include "family group conferencing" community sentencing circles, neighbour hood accountability boards, reparative probation, restitution program's and community service programs.

2.2.MEDIATION

Victim advocates have viewed mediation as "soft on crime" and therefore not in the interest of victims. In Reality it is not so.

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The Primary Focus in mediation is healing and closure. Heart felt apologies are offered by the accused and victim may also takes it and forgives the accused. Median process provides an "open space".

2.3.RESTITUTION

This system was used by "Professional thieves" When they are arrested they used to suggest to the victims that the property will be restored. This results in a large proportion of cases, for most victims are more interest in regaining their properly than in seeing justice done. Also many persons are protected against crime by insurance. The insurance company is interested primarily in restitution.

2.4. ROLE OF CENTRAL AND STATE GOVERNMENTS IN CORRECTIONAL ADMINISTRATION

"Prisons" is a state subject under the constitutional law of India as shown. The central Government was all along provided financial assistance. The money was paid by the Central Government through the Finance commissions awards as well as under the central scheme's for modernisation of prison administration. This is to strengthen the prison infrastructure. "Puzhal" is the new prison in Chennai. Which has all infrastructure and modem out look.

Thus the state Govenvnents are improving the condition of prison and the prisoners: look at the crime and look at the criminal before passing a sentence, to correct them. So also the prison is a place to correct them. Nowadays the accused persons are, "sent to prison not for punishment but as punishment."

The Bureau of Police Research and Development has been entrusted the task of framing a "Model Prisons Manual." It has also been entrusted the

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task of monitoring the implementation of the recommendations of Justice V.R. Krishna Iyer committee on women prisoners.

The Central Government had established an Institute of Correctional Administration in Chandigarh, for imparting training to prison personnel. A regional institute for correctional administration had also been established at Vellore in Tamil Nadu. The Ministry of Home Affairs for developmental activities also provided assistance to this institute. In the institute the emphasis is laid down on pragmatic lines including the co-operation and co-ordination of training aspects of the police and Judiciary.

2.5. PROLECTIVE HOME

Dr.Upendra Baxi went and observed in a place where women are kept for reformation. He found that place was poorly maintained. This has happened in Uttar Pradesh. **Dr.Upendra** is a professor of law and he is a great social reformer. So he filed a writ petition before the Supreme Court regarding the sorry state of the women's Reformatory. The Supreme Court directed the Uttar Pradesh Government to make good the women's reformatory. Thus the Union Government is always informed by the social workers, journalists and by the state itself. Thus the Union Government is in touch with the state government and work in the field of correctional administration.

Check Your Progress

1. What is Restorative Justice?
2. What is Restitution?
3. Examine the Contribution of Dr.Upendra Baxi.

As far as Tamil Nadu is concerned there are two women prisons. One is at Vellore North Arcot District and another is at Trichirapalli. They are maintained by Tamil Nadu Government in Good condition. Every district has got women Reformatory called **"Protective Home."**

2.6. EVOLUTION OF CORRECTIONAL PHILOSOPHY

Punishment is an art which involves in the balancing of retribution, reformation and deterrence in terms not only of the court and the offender but

also of the values in which it takes place, and in the balancing of these purposes of punishment, first one and then another receives emphasis as the accompanying conditions change. It is clear, therefore that a method of punishment which is suitable today may have been unsuitable in the past and may again become unsuitable in the future". F.J.O. Coddington - "The problems of punishment".

2.6.(1) ORIGIN

The roots of punishment were already present when man first appeared as a social being.

The purpose of punishment are retribution, reformation and deterrence.

"Retribution" is the pain which criminal deserves to suffer because he had broken the law and hurt some one. Retribution provided not only a vindication of the criminal law which is necessary to make criminal law more than a mere request but also an opportunity for the public to stand together against the Enemy of accepted value. And here it does little good to argue that we should hate the crime but not the criminal.

"Retribution has limitations in modern society. All most all prisoners return to society it is obvious that they must not be so stigmatized that they cannot take up lawful pursuits upon their release.

In practice deterrence and reformation receive more attention, while retribution is often shunned and condemned. But there are cases where deterrence nor reformation is possible. It is here that "retribution" stands out distinctly as a purpose of punishment.

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2.7. DETERRENCE

By deterrence is meant the use of punishment to prevent others from committing crimes. In order to accomplish this purpose the offender is punished so that he will be held up as an example. Philosophers who believe that deterrence is important conscious or unconsciously base their belief on the philosophy of "free will". It meant a person it free to do as he pleases. These believers are known as "Libertarians".

Edwin. H.Sutherland, Negley K. Teeters chapman reject this philosophy. "Will" according to the philosophy of freedom of the will is considered to be isolated from the psychological and social process and condition and to be an entity which may function independently of all experiences and teachings. Right and wrong are relative to time and place. The individual does not have a single choice from the "cradle to the grave."

"The libertarians argue, the advocates of freedom of the will are not the only ones who assert that scientific truth and reality do not coincide. The determinists themselves admit this and agree that despite the progress of sicence, the human persoality remains in no small degree of mystery" Donald.R.Taft.

2.8.PRISON AND PRISON REFORMS

In olden times "prison" was a resting place for the accused persons who were waiting for trail. Slowly it became "place of punishment." There were two kinds of **prisons.**

1. Common gaols ie detention in safe custody

2. Houses of Correction.

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"The Felons in this country (America) lie worse than dogs or swine, and are kept much more unclean that those animals are in kennels" - a magazine called "Gentleman".

2.8.1.PENITENTIARY ACT 1779

By the efforts of John Howard (1726 - 1791) The penitentiary Act was passed in 1779. This Act embodied Four Cardinal Principles as detailed by John Howard.

1. Structually secure, roomy and sanitary prisons.
2. All prisoners were subjected to a reformatory regimen of diet work and religious exercises.
3. The Transfermation of the gaoler (the master, an independent profit maker) into a salaried Government servant of the public authority : and
4. The systematic inspection of every part of the prison by some outside "Public servant".

The prisons in England called "Bride wells" were under the direct administration of Justice of peace. They appointed a "Governor" for daily administration of prisons. They also paid the Governors. In course of Time the justice of peace did not pay the Governors of prison for the daily adiministration of prison. Therefore the Governors just like superintendents of nowadays made the prisons a profit making business.

At this time General Prisons Act 1791 was passed.

2.8.2.EARLY AMERICAN PRISON

Jails and houses of correction were designed originally for the detention of persons awaiting trial. It was used slowly as a place of punishment

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after conviction. Only in 1788 a general law was passed for the use of jails as places of punishment for implementing the punitive reaction to "law breaking."

The conditions in those days: Jails and houses of correction were horrible. The prisoners spent their time in association, without labour depending on charity for their maintenance, food, and shelter. There was no attempt to treat sick inmates, even religious services were absent. In Walnut street (country) Jail in Philadelphia "Promiscuous and unrestricted intercourse and universal riot and debauchery" was present.

The Quakers of Philadelphia made decided efforts to change these conditions. In 1776 Richard Wister at his own expense provided soup for some of the prisoners in the country jail, when it became known that some of them had died of starvation. Philadelphia society for alleviating the miseries of public prisons was formed in the year 1787.

The following inscription, placed over the door of the New Jersey state prison, indicated the punitive philosophy that prevailed in such institutions: "Labour, silence, penitence 1797. That those who are feared for their crimes may learn to fear the laws and be useful. "Hic labour, Hoc Opus".

About the same time the state became interested in the maintenance of prisons of its own. There appeared a new conception of prison discipline which resulted in the designation of these institutions as penitentiaries. "Penitentiary" means an institution for "penitence" and not for retribution. The medieval prisons under the control of the church had this ideal. The same purpose was reflected in the law of England passed in 1778.

The purpose of the institution was stated by the law to be, "By sobriety, cleanliness and medical assistance by a regular series of labour by soli-

tary confinement during the intervals of work, and by due religious instruction (Space for Hints)
to preserve and amend the health of unhappy offenders, to insure than to habits of industry to guard them from pernicious company, to accustom them to serious reflection and to teach them both the principles and practice of every Christian and moral duty.

This law was framed by Blackstone Eden and Howard. Howard stated "The term penitentiary clearly shows that parliament had chiefly in view the reformation and amendment of those to be committed to such places of confinement.

2.8.3. THE PENNSYLVANIA SYSTEM

Prison leaders in Pennsylvania contended that association of all types of criminals in prisons is disastrous. They suggested that prisoners should be kept in solitary confinement. This prevented undesirable association of criminals, but also had the positive virtue of forcing the prisoners to reflect on their crimes, and therefore of producing reformation. "Separate and Silent" was the Rule.

2.8.4.THE AUBURN SYSTEM

The prisoners in Auburn were divided into three Groups. The first group composed of the "oldest and most heinous offenders," was to be kept in solitary confinement continuously, those in second groupwere to be kept in their cells three days a week and the others one day a week. The cells were small and dark, and no provision was made for work in the cells.

Charles Dicken when wrote his "American Notes" he included a severe arraignment of the Pennsylvania system, increased the antagonism between the two system. Auburn system was abandoned.

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2.8.5.IRISH SYSTEM

Irish system known to American leaders were discussed. Irish system consisted of the **indeterminate** sentence of the **"Mark system"** Prisoners could gain their freedom under this system by earning a certain number of credits, and a form of parole. The First institution which used that was **"Elmira Reformatory"**. Emphasis was placed on education productive labour, the mark system, the indeterminate sentence, and parole, all of which were designed to produce reformation. New York prisoners were begging the sentencing judges to send them to Auburn prison rather than to Elmira, because the disciplinary system at Elmira was so severe.

2.9. JUVENILE REFORMATORIES AND INDUSTRIAL SCHOOLS

The first American institution specifically for juvenile delinquents was opened in **New York** city in 1825, under the control of a private society called the New york Association for the prevention of pauperism. The state made annual grants for its maintenance. The first institution under the state control was started in **Massachusetts** in 1847. These institutions were not penal ilistitutions but schools. The children were to be educated, not punished. They had self-government, religious teachings, academic teaching indeterminate sentences, and release on good behaviour.

2.9.1.SPECIALISATION OF PRISON

Development of American prisons had been towards specialisation of institutions. Vagrants were withdrawn and placed in houses of correction. Institutions were established for juvenile delinquents, for insane prisoners, for young adults, for women, for blacks, for defective delinquents, for misdemeanants, for the sick etc. The Principles used in the selection of the

offenders include, the seriousness of the crime, the age race, sex, mental or physical condition of the offenders.

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2.10.CORRECTIONAL MANUALS RULES ETC.

Prisons Act : Prisoners Act

Transfer of prisoners Act

Juvenile Justice Act.

Jail Manual

Various prison reforms

Committees and commissions :

2.10.(A) POSITIONS OF PRISONS IN INDIA

There were number of jails in India; when the British ruled India.Prison maintenance was very poor. Prisoners were employed only as coolies for laying roads.

Prison Reforms in India

Prison reform was headed by Lord T.B. Macaulay. After seeing Alipore jail at calcutta exclaimed "shocking to humanity" and "a great dishonour to our Government".

Discipline committee in which Lord Macaulay was a member recommended 'Proper Building" and "improvement of sanitary condition". It also recommended good food clothing and treatment to the sick.

In 1864 Commission of Enquiry into Jail Management and discipline and in 1877 conference of Jail experts took place. After 1864 males and females and Juveniles were separated in Prison.

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Prison Act 1894

The Fourth Jail Commission in 1888 recommended uniformity in prison administration.

So Prison Act 1894 was passed. As a result;-

1. Convicted prisoner were separated from others who were not convicted may be under trial prisons and arrested persons.
2. Juvenile offenders were separated from others. The difference was also shown as before puberty and after puberty.
3. Prisoners convicted of crime were separated from person who were put to jail in civil matters.

Medical officer was appointed who could visit jails and attend on the sick person. Prisoners who were sentenced to undergo Rigorous imprisonment were not allowed to work more than nine hours perday. Thus Prison Act only introduced deterrence alone.

Indian Jails Committee

Indian Jails Committee (1919-1920) in its report recommended creation of **"children's courts"** for hearing all the cases of Juvenile delinquents and they should be accommodated in **"Remand Homes"**. The committee also suggested that warning, probation, fine in lieu of short-term imprisonment, **"Discharged Prisoners Aid Societies"** was born only on the, recommendation of the committee. **In 1920 Madras Children Act** was passed to look into Juvenile delinquents. System of remission in sentence of imprisonment was introduced and liberalised. Gratuity was paid to the prisoners for their hard work in prison. Prison education, prison library, periodicals were slowly introduced.

Check Your Progress

4. Explain deterrence.
5. Explain Pennsylvania system of Prison.
6. Bringout the Suggessions of Walter.C.Reckless.

The correctional philosophy which existed through out the World was also came to visit during this period in India. (Space for Hints)

Government of India Act 1935

After the Act "Prisons" as a subject was transferred to the States.

Dr.Walter. C. Reckless.

Dr. Reckless visited India during 1951-52. He submitted a report on "Jail Administration in India". He recommended

1. Training of correctional staff.
2. Revision of out-dated jail manuals.
3. Development of full time probation and revisiting boards for the after care services.
4. System of premature release.
5. Juvenile delinquents must be separated, the Juveniles should not be sent to regular courts.
6. Juvenile delinquents should not be handled by regular police.
7. Each state is to establish an integrated department of correctional administration which should comprise, prisons, children institutions, probation services and aftercare services.
8. Establishment of an Advisory Board of correctional administration in the Union Government which had to help the state Government for development of correctional programmes.
9. Regular conferences at Union level for senior correctional staff.

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All India Jail Manual committee 1957

The Government of India appointed the all India Jail Manual committee in the year 1957 to prepare a model prison manual. The committee examined all the existing Jail manual and correctional laws. The committee also laid down the guiding principles for prison managsment.

The model correctional manual is divided into 6 parts. These parts systematically deal with organization of different institutions architecture, staff and its recruitment, training and discipline, Rules relating to prisoners and their classifications, segregations, education, work, vocational training, cultural activities remission, discipline, sanitation and hygiene diet; transfer, pre-release and release, after care and rehabilitation, medical unit etc.

Central Bureau of Correctional Services 1961

The Central Bureau of Correctional Services was setup in the year 1961. It was placed under the "Ministry of Home Affairs". The Ministry of Home Affairs advised to State Governments to revise. their prison manuals in line with the model prison manual.

All India Jail Reforms Committee 1983

All India Jail Reforms Committee came in the year 1983. In Tamil Nadu prison reform commission was headed by Thiru. R.L. Narasimhan. Its recommemdations have been embodied in the prison manual. Prison Act 1894 was revised infull. The Mullah committee placed their stress on rights of prisoners.

The fundamental rights are

1. Human Dignity

2. Mininum Needs

3. Communication

4. Access to law.

5. Right Against Arbitrary punishments

6. Right to meaningful and gainful employment.

7. Right to be released on due date.

these are called Rights of Prisoners.

Prison Act and Prisoners Act

In India Prison Act came in 1894 and the Prisoners Act came in 1900.

Transfer of Prisoners Act

The Transfer of Prisoner's Act came in the year 1950. This made easy the transfer of prisoner from one state to another state in India.

Juvenile Justice Act 1986

Madras had Madras Children Act 1920. Likewise each state had its own children Act. There were many drawbacks in each of this Act. Therefore a uniform Act was brought out by the Union government. This was Juvenile Justice Act 1986. This was modified for its good in the year 2000. This is called Juvenile justice [care and protection of children] Act 2000. It was amended in the year 2005.

Jail Manual

The Tamil Nadu Prison and Reformatory Manual consists of four Volumes.

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Volume -I

It contains various Acts providing for the establishment and maintaining of prisons and Acts on Prisoners related subjects.

Volume II

It contains Jules and regulations for the management of prisoners framed under Section 59 of the Prisoners Act 1894.

Volume III

It contains the rules framed under other enactments namely Criminal Procedure Code 1973, Prisoners (Attendance in Courts) Act 1982, Indian Lunacy Act 1912, The Tamil Nadu Suspension of Sentence Rules 1982 and some other Acts with Rules relating to the administration of prisons.

Volume IV

It contains the executive and administrative orders and instructions issued by the Government and Inspector General of Prisons from time to time relating to 'Inspection' superintendence and management of prison and prisoners in the state of Tamil Nadu.

2.11. VARIOUS PRISON REFORMS

Committees and Commissions

We have already seen that the First committee on prison reforms was headed by Lord Thomas Bobington Macaulay. This committee was called "Prison discipline committee".

At that time prisons were over crowded as it is at present day. Bad state of sanitary condition prevailed. There were many death in the prison

because of this sadest state of effairs. Even contagious diseases broke out and eaten many prisoners for its horrible hungry.

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The committee therefore recommended spacious places and spacious prison and spacious prison rooms. The committee also suggested that sanitation inside the prison should be improved. It also recommended healthy diet and medical care for the inmates of the prison.

The **second** commission called commission of inquiry with jail management and discipline came into existence in the year 1864. It suggested the same as the first committee. The **third** review of prison conditions were done in the year 1877 by a "conference of jail experts" There were no new recommendations.

The **Fourth** jail commission came in the year 1888. It focused its attention only towards routine working of the jail, because Thiru Walker and Leth Bridge who were jail offIcials, were its members. this commission recommended uniformity of prison administration. In 1892 a committee was formed. This committee's recommendations were embodied in the Prisons Act 1894. This Prisons Act brought all the prisons in India under its province. Thus uniformity in prison administration was achieved.

The report of the **Fifth Jail Commission** (1919-20) was submitted under the Chairmanship of Sir Alexander Cardew, Secretary to the Government of India, Home department. In 1934 former **Prime Minister Jawaharlal Nehru wrote in "Prison Land"** High walls and iron gates cut off the little world of prison form the wide world outside"..... All Ihe might of the state is against him (Prisoner) and none of the ordinary checks are available. Even the voice of pain is hushed, the cry of agony cannot be heard beyond the high walls"

2.12. SUMMARY

In this lesson, we have the knowledge about peoples approach to crime and the approach to the punishment of the offender. How the Criminal administration is looking at the offender from different angles. There are poor Criminals there are rich Criminals. There are offenders who are socially not educated and there are offenders not mentally normal. There are child offenders, woman offenders. How they are to be treated is a problem not only for the Criminal administration but also for the prison administration and to the people at large.

An offender is coming only from a society. So the society has to treat the offender. Here in comes the Jeremy Bentham's utilitarian Theory. The offender is to treated so that the society may be benefited. We had the help of Walter. C. Reckless. Who came to India studied the environment and submitted a report on "Jail Administration in India". He has recommended so many things. We are Carrying out his submission one by one.

2.13. KEY WORDS

Prison Act - A low to carry all the prisons under its province

Juvenile - Offenders under 18 years of age.

Milieu - Ones social Surronding.

Vagrant - Persons without a place to live.

Regimen - Orderly Government.

Shunned - avoid

Prison - Where a person is kept under police custody.

Delinquency - Offence committed by Children.

2.13. ANSWER TO CHECK YOUR PROGRESS

For Question No. 1. Refer Para. 2.1

For Question No. 2. Refer Para. 2.3

For Question No. 3. Refer Para. 2.5

For Question No. 4. Refer Para. 2.7

For Question No. 5. Refer Para. 2.8.3

For Question No. 6. Refer Para. 2.10(a)

2.15. MODEL QUESTONS

1. Examine the role of central and state Governments in Correctional Administration.

2. Explain

   a) Pennsylvania System

   b) The Auburn system.

   c) Iresh System.

3. Bringout the suggestions of Walter. C. Reckless.

(Space for Hints)

PART - II

CORRECTIONAL INSTITUTIONS

LESSON 3

INTRODUCTION

School is an institution we learn not only educaiton - or subject - Lessons and so on - there we also learn many things - eg. how to behave in society. The School teaches us how we must be have with our teachers - inmates - boys and girls. It also teaches us in many things about society - say our culture - our morality. - our behaviour - we are socialised in many ways - we learn, we learn and learn. Correctional institutions - like prison, labour comps, detention plaus - teaches the inmate offenders in somary ways. So when they leave the prison - they would like to come back, of course to see their friends as a courtsy visit, to inform them how much freedom the enjoy outside world.

UNIT OBJECTIVES

To know much about - Jails - Evolution and Developmnet Characteristics of Prison - Prison System in British India Classification system - Adult Institutions - prison labour, Prison education - Juvenile Institutions - and the like.

UNIT STRUCTURE

Introduction

Unit Objectives

Unit Structure

3.1. Institutionalization

3.2. Evolution and Development

3.3. Characteristics of Prison.

3.4. 1. Prison System in Ancient India

2. Prison system during Mediaval Period.

3.5. Prison system in British India

3.6. Classification System

3.7. Adult Institutions.

3.8. Education in Prison

3.9. Summary

3.10 Keywords

3.11. Answers to check Your Progress

3.12. Model Questions

3.1. INSTITUTIONALIZATION: MEANING AND PURPOSE

The prison was expected to serve **"three purposes"**. They are

1. Custodial

2. Coerce; and

3. Correctional

(Space for Hints)

Prison is an instrument of the state. The prison is expected to reform and rehabilitate the in-mates of prison. Prison has evolved in to the status of institutions of **"social control"** and legitimate coercion. It is now no more a resting place. The society wants retribution. The prison is expected to make life unpleasant. The prison is also expected to reduce crime by reforming the inmates and also by deterring the general public.

3.2. EVOLUTION AND DEVELOPMENT OF PRISON SYSTEM IN INDIA

Prison is a place in which persons are kept in custody pending trial. It also meant in which convicts are confined "as punishment." There are **three** important stages in the history of prisons.

The First lasted till the middle of the sixteenth century. It was a period where the penal institutions were dungeons. It was in a part castle.

The Second period was one of experimentation. Certain kind of offenders such as prostitutes, vagabonds were housed in these places. **"London Bridge"** was one such kind.

The **Third** period imprisonment was working as a substitute virtually for capital punishment. In India Jail, means a place where under trial prisoners and persons sentenced to imprisonment are commonly placed.

3.3.CHARACTERISTICS OF PRISON

We never wanted to go to Hospital. But when we are sick we are hospitalised. We have no name when we are admitted in the hospital. We may be called Ward No.1. patient No. 1."Likewise we never wish to go to jail. But when we are put in prison, we call this process **"Prisonisation"**. In prison also we may have no name but we are called by the number we are

assigned. In hospital environment a man gets cured off; by the time he gets many friends in the hospital. When a man is discharged from hospital, he wants to go and see people in the hospital and console them. Likewise it may also happen in jail. A man may be longing to go inside the prison to see his co-mates "friends and relatives". A person wrongfully put in hospital may get damages (money compensation) likewise when a person is put in prison he may get damages. A river goes ever whether good things happen or not, likewise hospital goes and prison goes.

Historical Evolution

Normal Morris refers in his book **"The future of imprisonment"** to punitive prison. These kind of prisons were used in Rome, India, Babylon and firmly establishment in Renaissance Europe.

3.4.1.Prison system in Ancient India

We are very eager to know, but little is known about the past. But however we get some here and there. Imprisonment occupied an ordinary place among the penal treatment. The wrongdoer was kept in prison only to be separated from the society. These prisons were dark and unlighted: No sanitation no human treatment.

Emperor Asoka was influenced by "Buddhism". So reformatory measures were taken during his period. After Jataka narrates about the society, crime and punishment. The release of prisoners were a common feature at this period. From The King **HARSHA CHARITHRA** we are able to see only from the eyes of **"Hiuentsang".** He said prisoners received harsh punishment.

(Space for Hints)

3.4.2.Prison system during Medieaval period

Mughal occupied this period. Imprisonment was not a form of punishment. It was used as a detention centre. There were forts indifferent part their kingdom. In these forts in secluded places the criminals were detained. Pending trial and judgement. There were three "Noble prisons". One was at Gwalior, second was at Ranthambore and the third was at Komas. Persons who were given death penally was usually sent to Ranthambore. They will be put to death after two months.

The Fort at Gwalior was for "Nobles who offended". Princes of Royal Blood were sent to Rohtas. According to muslim law the Quazis have to visit the prisons and release who repented. When Salim was born Akbar the great released the prisoners. Likewise Shah Jahan released the prisoners when his beloved wife Mumtaz recovered from illness. We can say therefore that there were no prisons in the modern sense. There was no rules for administration and maintenance of prisons.

3.5.PRISONS SYSTEM IN BRITISH INDIA

When the British came to India, they changed the administrative structure. The Regulating Act came in the year 1773. The entire basic structure was altered. A supreme court was established at Calcutta. It exercised Civil, Criminal Admirality and Eccleastical jurisdiction. In 1860 our beautiful Indian Penal code was given birth. It was followed by Criminal Procedure Code. Indian Evidence Act also came in 1872. Punishment was uniform throughout British India.

Check Your Progress

1. Explain the development of Prison system in India
2. What are the Characteristics of Prison?
3. What is Prisonisation?

The so called Jail as an institution was introduced, in India. When it was introduced it was a smallest unit.

3.6. CLASSIFICATION SYSTEM : MEANING AND SIGNIFICANCE

When an Act is done it should have some meaning behind it. Persons convicted of crime were put in prison. That was the way society behaved towards their criminals. The distance between rulers and those ruled were too long at that time. Time rolled on. "pleasure and Pain". Principle was introduced. Jeremy Bentham calculated it very correctly. So crime and the criminal were weighed and punishment was awarded. During Eighteenth and Nineteenth century people felt that putting all persons in one Jail was wrong. The object why a person is put in jail came to light. Individualisation of punishment drew the attention of Penologists. Now penologists worked out an objective classification of prisoner according to differential treatment. The protection of the society from the criminals is the main object of punishment. Classification of prisoners is, the best method to attain this.

Austin, Mc. Cormick when he wrote the article "The prisons," said, that the important work after admitting the inmate in the prison shall be the scientific classification and programme planning on the basis of complete case-histories, examinations, tests and studies" of the in-mate. Scientific classification alone can form the basis of all treatment and rehabilitation programme in prison.

The classification committee should have a qualified psychologist, social case worker experts in education and work therapy, besides the medical officer. Under the charimanship of the superintendent of the prison. The progress of treatment will be followed up and reviewed by the committee.

Classifications of prisoners -in India in Present time.

1. Sex -Men -women

(Space for Hints)

2.. Age -Juvenile -young offenders -adults

3,. The law under which confined

i) Civil Prisoners

ii) Detenus

iii) Non-criminal lunatics

iv) Inmates under protective custody

v) Inmates confined under preventive sections of criminal procedure code.

4. Stage of investigation and trial into remand prisoners and under trial prisoners.

5. Nature of sentence

a) Simple imprisonment

b) Rigorous imprisonment

c) Short term, medium and long term imprisonment

d) Life imprisonment; and death sentence.

6) Criminal antecedents

a) Casual and

b) Habitual

7. Disease

a) Lunatics

(Space for Hints)

b) Lepers, Tuberculosis and AIDS.

8.Socio-Economic status.

Classification of prisons

a) Minimum security prisons

i) Open air prisons.

b) Medium security prisons -it has fence and armed guards.

c) Maximum security prisons.

-with huge walls, multiple fences with cyclone wires.

-here security is more important.

3.7.ADULT INSTITUTIONS

Central Jail -separate for men and women was established in all the states in India. As far as Tamilnadu is concerned there are two women prisons. One at vellore and another at Trichy. Open air prison for men one at Salem and another at Tanjore and the third at Sivagangai are established.

What happens in Jail daily?

"Men may come and men may go but I go on for ever" said the River. Likewise Prisoners may come and prisoners may go but the prison goes on forever. It is Routine.

All the blocks and cells and barracks are unlocked at early hours of the day by convict warders called watchman. In-mates after calls of nature take bath and breakfast by 7.30 in the morning and shall have to go to work

(Space for Hints)

spot by that time. They will have to work till 11.30.A.m. The work spot is closed by 11.30 to 12.30 P.M. This one hour is lunch Break for the prisoners. They will resume their work from 12.30 P.M till 4.30 P.M. From 4.30 evening to 6'0 clock they are left free. They can play, go to the library; have a nice bath. However by 6.30 meals will be served. After that they will have to go to their respective places and they will be locked up. Till 9.30 P.M. they will be allowed to study Books, hear music, hear radio news and they can see Television also. After 9.30 P.M. strict silence have to be observed. They have to go to sleep. During night time prison officials will check-up. This is the routine work in the prison.

Carpentary is generally carried out in the central Jail. These wooden articles are used in Government offices, schools and colleges. Weaving, Tailoring also carried out. The uniforms given to the Prisoners Police Personels are striched in the central prison itself. Besides this Book-Binding Blacksmithing are also taught in the prison. Printing Technology is also taught in central prisons. Soap making and Tag making is also carried on in central Jail.

Warden Guards are appointed to lookafter the security of the central prison. They go round the Jail during day time and night time. Jailors shall have a night. visit. at least once in a week. The superintendents shall make night visit at least once in fortnight to see duties are properly carried out.

3.8. EDUCATION IN PRISON

Check Your Progress

4. Examine the Prison system in British India.
5. Examine the classification of Prisoners - in India Presently.

Formerly education was a dream for the prisoners. Then they were taught three R s'. Now in Tamil Nadu there are schools up to Fifth standard. These schools have teachers and a library. The district educational officer used to visit the prison school. The procedure is same as in others schools out-side the prison.

The inmates are doing nowadays B.A. and M.A. & M.Sc., of their own choice by correspondence courses.

We have got D.I.G. of prisons and I.G. of prisons in Tamil Nadu. Inspector General of prisons shall visit and conduct the Annual Inspections every year. He has to satisfy himself as to the security arrangements of the prisons. He has to lookafter the Rehabilitation and Welfare of the prisoners. (Space for Hints)

1. Prison labour

&

2. Prison Education

3. Vocational guidance

Why it is called "Central" Prison

Penological Philosophers like Bentham thought the prison should be in the central place of the city. It is not only for the purpose of security but also for the purpose that every citizen must know about the Prisoner. They thought that the prison walls should be inside the prison cell and all people should be allowed to view the prisoner from outside. If only the prisoner has sense of "Shame" he will rehabilitate soon was the idea behind this philosophy. So each prison was constructed in the centre of the city. Now it is in India it is called "central prison" in name only. It is situated out side the city. We all know this.

3.9. SUMMARY

In this lesson we have studied about the prison. Prison is an instrument of the state. It is a states subject in India. It is an institution of social control. When a person is put in Prison - he adjusts his life - with prison and its culture - which is called **"Prisonisation"**. We have studied about classification of prison and prisoners.What is a Prison and what happens in prison are very interesting areas to everybody if you go and visit a prison. Prison education and prison labour are important steps in socializing the offender.

3.10. KEYWORDS

1. Classification of Prison - There are various kinds of Prison.

(Space for Hints)

2.	Specialisation of Prison	-	Special Prison - according to age, health and mental condition.
3.	Jail	-	a place where all the freedom of movement of a person is taken away.
4.	Jail Committee	-	Group of person who studied prison and recommonded for its improvement.
5.	Jail Mannal	-	a book which gives guiding Principles for the administration of a Jail.

3.11. ANSWERS TO CHECK YOUR PROGRESS

For Question No. 1. Refer Para. 3.2

For Question No. 2. Refer Para. 3.3

For Question No. 3. Refer Para. 3.3

For Question No. 4. Refer Para. 3.5

For Question No. 5. Refer Para. 3.6

3.12. MODEL QUESTIONS

1. Explain the development of Prison System in India.

2. What are the Characteristics of Prison

3. Write Short notes on Prison Education.

LESSON - 4

JUVENILE INATITUTIONS

INTRODUCATION

For a long period in our society we have always neglected one good factor - ie children. When they committed an offence they have been punished like adult criminals. Both the adult criminals and the Juvenile delinquents were put in the same prison. As a consequence when the children came out of Prison they came as a hardened criminals. Charles decan wrote about the sufferings of the Children. Slowly the rulers wanted the children - who committed an offence without knowing the nature of crime - to be normal citizen and useful to the society. They enacted laws for the welfare of the children. The Children in confliet with laws were taken care of by the state itself. In their allround growth and personality.

UNIT OBJECTIVES

We can study how a Jurenile is brought up by the Juvenile Justice (care and Protection) Act. The step taken by the Rulers - in a right direction. The child will have allround growth by the law and the Institutions of the law.

UNIT STRUCTURE

Introducation

Unit Objectives

Unit Structure

4.1. Who is a Juvenile ?

1.Fixing the age.

(Space for Hints)

4.2. Juvenile Justice Board

1. Powers of Juvenile welfare Board.

4.3. Child Welfare Committee.

1. Powers of the Committee.

4.4. Special Home.

4.5. Children's Home

4.6. Shelter Home

4.7. Borstal Schools.

4.8. Classification of in mates

4.9. Women Institutions

1. Women Prison

2. Protective Homes

3. Rescue Shelters

4. Open Air Prison.

4.10. Summary

4.11. Keywords

4.12. Answers to check your Progress.

4.13. Model Questions.

Here we have to deal with

i) Observation Homes

ii) Juvenile court

iii) Juvenile Welfare Board

iv) Special Homes and

v) Borstal School

4.1. WHO IS A JUVENILE?

In traditional societies, boys and girls undergo rites of passage, where by, quite literally, one day a person is a child and the next day an adult. There is no transition other than preparation for the ceremony of status change, and there is no question in anyone's mind as to the person's status, especially the person who underwent the change.

In Modern-day societies, the passage from childhood to adulthood is gradual and equivocal. A person may consider himself an adult and certain others may share his image, but still others may consider and treat him as a Juvenile. Eventually everyone is granted adult status, but the mechanism for such recognition is very vague and the complete transition may take years.

4.1.1.FIXING THE AGE

A Juvenile is usually considered as unmarried youth who resides with his parents.Most would agree that such terms as "kid" "Child" adolescent teenager and boys and girls all denote something other than a full fledged adult.

Perhaps if we consider juveniles to be "persons still in development" we can best understand the concept of.Juvenile. "Development" in this context refers to both physical and social development, and as we shall see, a person's physical development does not necessarily mean he has developed socially.

If we attempt to specify an age at which a person is considered a complete adult or. if we look for key rituals of passage from juvenile to adult status we shall become hopelessly confused. Generally we can point to the legal voting age, the drinking age, the age at which one can obtain a driver's license as important ages, but no single age can really pinpoint the dividing line between Juvenile and adult.

(Space for Hints)

Bench marks such as graduation ceremonies, marriage having children and leaving home are vague. A fourteen-year-old girl may marry and have children and many may consider her an adult, but few fourteen-year-old are treated as genuine adults. On the otherhand a boy may live at home with his parents and fully depend on them through college and through graduate school leaving home for the first time in his late twenties can we conceive of a twenty-five-year old doctoral candidate as a Juvenile.

According to Juvenile Justice [care and protection of children] Act 2000, Section 29(k) Juvenile or child means a person who has not completed eighteenth year of age.

Who is a Juvenile? (according to J.J. Act)

Juvenile in conflict with law is a person who is alleged to have committed an offence.

"Observation Homes"

Under Section 8 of the Juvenile Justice [care and protection of children] Act 2000 the state Government has to establish **"Observation homes"** for the temporary reception of any Juvenile in conflict with law during the pendency of inquiry against him. Separate enclosures shall be maintained for boys and girls. The study and observation of a child during his stay form the basis for planning in the best interest of the child. The **"Home"** shall make arrangement for the child to be heard and enquired by **"social worker"** or **"probation officer."** It should also help the child to receive functional literacy and help it to build self-confidence. It should provide for proper health care and education. The home shall be maintained by superintendent.

Admission of **"Juvenile"** shall be made round the clock. Only a Juvenile in conflict with law shall be kept in the observation home admission of a Juvenile shall be made by Juvenile Justice Board, by issuing placement order. Rule 26 enjoins the observation Home to send information, to parents, and verify the identification marks and the order of the **"Juvenile Justice Board"**. A medical chart for the Juvenile shall be maintained. Juvenile has be

produced before the Board through the police in ordinary plain clothes of a civilian or Mufti, or a staff of the **"Observation Home."** (Space for Hints)

Juveniles committed to **"Special Home"** shall be sent to Observation Home. Before 5th date of every month the Observation Home shall send a report to the Juvenile Justice Board and to the District and Sessions Judge furnishing the information about the list of Juveniles kept in the Home.

Sub-clause (3) of section 8 is as follows. "The state Government may, by rules made under this Act, provide for the management of observation homes, including, the standards and various types of services to be provided by them for rehabilitation and social integration of a Juvenile, and the circumstances under which, and the manner in which, the certification of an observation home may be granted.

Sub-clause (4) of section 8 reads as follows.

"Every Juvenile who is not placed under the charge of parent or guardian and is sent to an observation home shall be initially kept in a "reception unit" of the observation home for preliminary inquiries, care and classification for Juveniles according to his age group, such as (1) Seven to twelve years; (2) twelve to sixteen years and (3) sixteen to eighteen years, giving due considerations to physical and mental status and degree of the offence committed, for further Induction into observation home.

Juvenile Court and Juvenile Welfare Board

Under the old Law, Juvenile Justice Act 1986 Juvenile court was defined under section 5 of the Act, Juvenile court was a special court. It is now no longer good law. Under the New Act "Juvenile Justice Care and Protection of Children Act"2000 "Juvenile Court" does not find a place. Instead we have **"Juvenile Justice Board"**, which is defined under Section 4.

The state Government may, by notification in the official Gazette, constitute for a District or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the power and discharging the

(Space for Hints) duties conferred or imposed on such Board in relation to Juveniles in conflict with law under this Act.

4.2. JUVENILE JUSTICE BOARD

A Juvenile Justice Board shall consist of a Metropolitan Magistrate or a judicial magistrate of the first class, as the case may be and two social workers of whom at least one shall be a **"woman"** forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure on a Metropolitan Magistrate of the First class and Magistrate on the Board shall be designated as the "Principal Magistrate".

No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in **"child psychology"** or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in **health education**, or welfare activities pertaining to children for atleast seven years.

A Juvenile in conflict with law may be produced before an individual member of the Board, when the Board is not sitting. A Board may not withstand the absence of any member of the Board, and no order made by the Board shall be invalid by reason only of the absence of any member during any stage of proceedings provided that there shall be it, at least two members including the 'principal magistrate' present at the time of final disposal of the case.

4.2.1.POWERS OF JUVENILE JUSTICE BOARD

Sec. 6 (1) where a Board has been constituted for any district or a group of districts, such Board shall, not withstanding anything contained in any other law for the time being inforce but save as otherwise expressly provided in this Act, have power to deal exclusively with all proceedings under this Act relating to **"Juvenile in conflict with law".**

(2) The powers conferred on the Board by or under this Act may also be exercised by the High court and the Court of Sessions when the proceedings comes before the in Appeal, Revision or otherwise.

Case law

Sheela Barse-Vs-Union of India [AIR 1986 S.C 1773] where a complaint is filed first information report is lodged against a Juvenile below the age of 16 years for an offence punishable with imprisonment of not more than seven years, the investigation shall be completed within a period of three months from the date of filing of the complaint lodging of the first information report. The case against the Juvenile must be treated as closed. If within three months, the charge sheet is filed against the Juvenile in case of an offence punishable with imprisonment of not more than seven years, the case must be tried and disposed of within a further period of six months at the outset and this period should be inclusive of the time taken up in committed proceedings if any.

4.3.JUVENILE WELFARE BOARD

"Juvenile Welfare Board" originally under Juvenile Justice Act (1986) under Section 4 is mostly retold under Section 29 of the Juvenile justice (care and protection of children) Act 2000. It is now renamed as **"Child Welfare Committee".**

Sec. 29(1) Child welfare committee

"The state Government may by notification in official Gazette constitute for every district or group of districts, specified in the notification one or more child welfare committees for exercising the powers and discharge the duties conferred on such committee in relation to child in need of care and protection under this Act.

(2) The committee shall consist of a chair person and four other members as the state Government may think fit to appoint of whom atleast one shall be a woman and another, an expert on matters concerning children.

(3) The qualification of the chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(Space for Hints)

(4) The committee shall function as a "Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure 1973 on a Metropolitan Magistrate or as the case may be, a Judicial Magistrate of the First Class.

Section 30. Procedure

Procedure in Relation to committee

(1) The committee shall meet at such time and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(2) A child in need of care and protection may be produced before an individual member for being placed in safe custody or otherwise when the committee is not in "sessions."

(3) In the event of any difference of opinion among the members of the committee at the time of any interim decision, "the opinion of the majority" shall prevail but where there is no such majority the opinion of chair person shall prevail.

(4) Subject to the provisions of sub-section (1). the committee may act, notwithstanding the absence of any member of the committee, and no order made by the committee shall be invalid by reason only of the absence of any member during any stage of the proceedings.

4.3.1.SECTION 31 POWERS OF COMMITTEE

Check Your Progress

1. Who is a Jurenile?
2. Juvenile Justice Board - Explain.
3. Juvenile Welfare Committee - Explain.

(1) Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and "protection of human rights."

(2) Where a committee has been constituted for any area, such committee shall not-withstanding anything contained in any other law for the time being in force but save otherwise expressly provided in this Act, have the power to deal exclusively with all proceedings under this Act relating to children in need of care and protection.

Section 32. Production Before committee

(1) Any child in need of care and protection may be produced before the committee by one of the following persons :-

i) any police officer or special Juvenile police unit or a designated police officer.

ii) any public servant

iii) child line, a registered voluntary organisation or by such other voluntary organisation or an agency as may be recognised by the state Government;

iv) any social worker or a public spirited citizen authorised by the state Government; or

v) by the child himself

(2) The state Government may make rules consistant with this Act to provide for the manner of making the report to the police and to the committee and the manner of sending and entrusting the child to **"Children's home"** pending the inquiry

Section 33. Inquiry

(1) On receipt of a report under Section 32, the committee or any police officer or special Juvenile unit or the designated police officer shall hold an inquiry in the prescribed manner and the committee, on its own or on the report from any person or agency as mentioned in sub-section (1) of Section 32 may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer.

(2) The inquiry under this Section shall be completed within four months of the receipt of the order or within such shorter period as may be fixed by the committee. Provided that the time for the submission of the inquiry report may be extended by such period as the committee may, having regard to the circumstances and for the reasons recorded in writing, determine.

(Space for Hints) (3) After the completion of the inquiry if the committee is of the opinion that the said child has no family or ostensible support it may allow the child to remain in the "**Childrens Home**" or **Shelter home till suitable rehabilitation is found for him** or till he attains the age of eighteen years.

4.4.SPECIAL HOMES

Under Section 9 of the Juvenile Justice [care and protection of children] Act 2000 the state Government shall establish and maintain "SPECIAL Homes" either by itself or with the help of voluntary orgainsation. These special homes are meant for reception and rehabililation of Juveniles in conflict with law. The state Government has to frame rules for the management of these homes. The Tamil Nadu, under Rule 33 has established special Homes for boys and girls exclusively for their (1) reception, (2) care,

(3) treatment and (4) rehabilitation. The Juveniles in conflict with law will under go institutional training.

These homes shall have facilities for nonformal education, professional assistance by psychologist, social worker or counsellors for behaviour modifications for creative learning and cultural programmes. These homes provide for sports and other extra-curricular activities to the inmates. The Object of such homes is to prepare the Juveniles in conflict with law for reintegration within the community as a "changed person."

4.5. "CHILDREN'S HOME"

[under the old Act it was called Juvenile Home]

Section 34 of the Act enables the state Government to establish and maintain CHILDRENS HOMES for the reception of child in need of care and protection during the pendency of an inquiry against it. These homes should give care, treatment, education training and rehabilitation to such children. Children of both sex below 10 years shall be admitted in it. Separate children's

home are setup for boys and girls in the age group of 10 to 18 years. The children shall be provided with nutritional diet as prescribed be nutritional experts. Children are admitted in these homes as per the orders of child welfare committee. These homes shall orient the children on their rights and to facilitate them to receive vocational training. These homes impart behaviour modification programmes to personal growth and development to the child so that it develops positive attitude towards family. The grown up **"Children in conflict with law"** cannot be admitted to these home under any circumstances.

4.6."SHELTER HOMES"

The shelter homes [Section -37] established by the state Government shall function as **"drop-in-centre"** for the children in need of urgent support. These homes care an protect destitute street children, run away children. It shall have all facilities of boarding and lodging besides health care and nutrition. The children in crisis situation live in these shelter homes. The child welfare committee, **"special Juvenile police units"** and social workers may send such children to these homes. It shall take such steps for the restoration and protection of such child to his parent, guardian, fit person of fit institution.

4.7."BORSTAL SCHOOLS"

Borstal school is established by the Government of Tamil Nadu.

The Tamil Nadu Borstal schools Act came in the year 1925.

It is an act to make provision for the establishment and regulation of Borstal schools for the detention and training of adolescent offenders.

Preamble :- Whereas it is expedient to make provision for the establishment and regulation of Borstal schools in the state of Tamil Nadu for the detention and training of adolescent offenders therein.

(Space for Hints)

Statement of Objects and Reasons

The object of the Bill is to provide for the detention of adolescent offenders in social institutions in which they will be given industrial training and other instruction and subjected to such disciplinary and moral influence as will conduce to their reformation. It is now generally recognized that the period of adolescene is the most critical in an individual's life when the mind is specially susceptible to fresh impressions and when it is peculiarly, Important to prevent habits of immorality and crime from being formed, and that is undesirable from all points of view to familiarise adolescents with ordinary jail life and bring them into contact with adult prisoners.

The experiment has been made during the lost few years of sending adolescent prisoners to the **"Borstal school at Tanjore"**. In order to bring them under **"Reformatory Influences"**. The main features of the system being the special and individual training of the Inmates and conditional release of such of them as appeared to deserve the privilege to enable them to enter the service of the societies or Individuals. **"The results of the experiment have been satisfactory"** and the Bill is framed with a view to the expansion and extension on the system

The chief defect in the existing system is the admission in Borstal cannot profit by the Borstal treatment. The present procedure about releases is also **cumbrous** as every case has to be dealt with under the Criminal Procedure Code.

The Bill is intended to remove these defects. It empowers certain clauses of courts, to pass order detaining adolescent offenders-Those who are not less than 16 and not more than 21 years of age-in Borstal schools for a term of not less than three years Instead of sentencing in the ordinary way to imprisonment. Provision is made, subject to rules made by the local Government, for the transfer of Borstal schools of adolescent offenders, whether convicted before or after the passing of the Act.

A system of conditional releases on licence is also introduced with the necessary provisions for revocation and for forfeiture of a license once issued.

(Space for Hints)

"Borstal" is a corrective institution wherein adolescent offenders whilst detained in pursuance of this Act are given such industrial training and other instruction and are subject to such discplinaryand moral influences as will conduce to their reformation, and the prevention of crime.

A Borstal School is at "Chengalpattu" inside the Fort of Chengalpattu in the state Tamil Nadu.

Committal to Borstal Schools

Section 8. Power of court to pass sentence of detention in Borstal school.

(1) Where it appears to a court having jurisdiction under this Act that an adolescent offender should, by reason of his criminal habits or tendencies or association with persons of bad character, be subjected to detention for such term and under such instruction and discipline as appears most conducive to his reformation and repression of crime, it shall be lawful for the court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in Borstal school for a term which shall not be less than Two years and shall not sxceed five years. [But in no case extending beyond the date on which the adolescent offender will in the opinion of the court, attain the age of Twenty Three years.

Before passing a sentence of detention in a Borstal school, the court shall call for a report from the probation officer and shall consider such report and shall consider any representation which may be made to it, The court may make such further enquiry as to the suitability of the case for treatment in a Borstal school and shall be satisfied that the character, state of health, and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such instruction and discipline as aforesaid. The report of the probation officer shall be treated as confidential. The report is called pre-sentence report.

Case Law 1.

Tamil Nadu Borstal school Act 1925. Section 8 - TamilNadu Prisons Manual Rule 575 -Sending of prisoners on attaining the age of 25 to the

(Space for Hints) prison from Borstal school: When the court at the time of conviction under section 8 in lieu of passing a sentence of imprisonment passed a sentence of detention in a Borstal school such imprisonment shall not be for a term less than "Two years" and shall not exceed "five years" but in no case shall extend beyond the date on which the offender will attain the age of 23 years. K.Selva kumara sa my -Vs -The State of T.N. 1992 Law weekly [cri] 425 [Mad].

Case Law -2

Tamil Nadu Borstal School Act 1925. Section 8 and 20

Minimum sentence of detention in Borstal school is two years -Appellate court has no powers either to modify or reduce said detention.

The object of the section providing for minimum period of detention for the adolescent offender, would be, that they should be reformed by putting them in Borstal school at least for a "continuous period of two years". So that suitable instructions and discipline could be imparted in the mind of adolescent which would be most conducive to his reformation and the repression of the crime. So the court, in the light of the above object, while imposing the sentence, on the adolescent offender, has to bear in mind, in order to see that the offender is getting reformed. So that he would become an useful citizen for the society.

In Re K. Ramalingam I.P.S, Inspector General of prisons. Annasalai Madras 1997.(2) Law weekly (cri) 567

Release on Licence

Section 15. Power to release on Licence :

(1) Subject to any general or special directions of the Inspector-General, on the recommendation of the **"Visiting committee"**, may, at any time after the expiration' of six months from the commencement of the term of detention if satisfied that there is a reasonable probability that the inmate will obstain from crime and lead a usual an industrious life, by licence permit him to be discharged from the Borstal school on condition that he may be placed

under the supervision, or authority of any Government officer, secular institution, or person, or religious society professing the same religion as the inmate, named in the licence who may be willing to take charge of him.

(Space for Hints)

A licence under this section shall be in force until the term for which the offend was sentenced to detention has expired, unless sooner revoked or forfeited.

Section 19

Absence under licence to be counted towards period of detention

The time during which a person is absent from a Borstal school under a licence shall be treated a part the term of his detention In the school: Provided that where that person has failed return to the school on the licence being forfeited or revoked, the time which elapse after his failure so to return shall be excluded in computing the term during which he is be detained in the school.

Section 19 A

The control and management of every Borstal school shall vest in a superlntende appointed by the state Government.

Section 19 B

Every **"Visiting committee"** shall consist of the Sessions Judge, the District Magistrate, the District Educational officer of the district in which the Borstal school is situated and four non official members appointed by the state Government.

It shall be the duty of the "visiting committee" and its members.

a) to visit the school either individually or collectively

b) to make suggestions for the improvement of the training and on the progress of the school.

c) to interview the inmates immediately after their arrival and to make suggestions. if any, as to the special training which each should receive

d) to consider cases of release on licence placed before them by the superintendent; and

e) to consider such action as may be necessary in regard to the inmates whose term of detention is about to expire.

Section 19 C

4.8.CIASSIFICATION OF INMATES.

(1) The Inmates of a Borstal school shall be divided by the "Superintendent" according to their Industry and good conduct into four grades.

They are

i) the penal grade

ii) the ordinary grade

iii) the star grade

iv) the special star grade

2) The privileges of each grade shall be higher than those of the grade proceeding,

3) Every inmate shall on reception in a Borstal School be placed in the ordinary grade.

4) The Superintendent may promote or reduce any inmate from one grade to another in accordance with the provisions of sub-section 5 the rules made under this Act and the general instructions of the "visiting committee".

(5) Promotions and reductions shall be regulated by close personal observation of the inmates and shall depend specially on their general behaviour, amenability to discipline and attention to instruction both literary and industrial.

4.9. WOMEN INSTITUTIONS

Here we have to deal with

I) Women prison

ii) Vigilance Home

iii) Protective Home: and

iv) Short stay Home

4.9.1.WOMEN PRISON

The Indian Jails committee wanted the separation of femate prisoners from males. It also suggested that Matron (Female Warder) should be posted to every Female prison. Female prisoners should be escorted only by Female staff.

Formerly, there was only one special prison for women in Tamil Nadu. It was stationed at Vellore. All the women prisoners were sent only to this Jail.

The Prison Reforms Commission recommended another women prison. Accordingly special prison for women was **"Started at Madurai"** in the year 1987. It was constructed" central prison. Women staff manages the women prison.

There is a Lady Superintendent and there are Female Warders, Head Warders Head warders, Matron, Lady Welfare officer and women Medical officer in these Women prisons.

There is a women prison in **Trichy** as well.

In addition to these separate institutions for women prisoners, there are also separate Blocks in "selected central prisons" for women prisoners and women staff guards them. These blocks of women prisoners are isolated from the blocks of the male prisoners. There are also separate cells in each of the sub-jail in the state of Tamil Nadu.

(Space for Hints)

The **"National expert committee"** on women prisoners was set up under the chairmanship of Justice. V.R. Krishna Iver. The committee had submitted its report' Government on 13-5-1987.

In order to assist the Government in implementing the various recommendations the committee, a co-ordination committee had been formed in Tamilnadu with the Inspector General of Prisons as Chairman and the Director of Social Defence and Director of School of Social Work and Director of Probation as the members of the committee.

New programmes are invented for the Correction and Rehabilitation offenders. A special school for the children of the prostitutes was started. It is run, the time "Nights." The teachers are educated prostitutes. It is in Bombay near Red Light area.

4.9.2. VIGILANCE AND PROTECTIVE HOMES

The Government, established these homes under the immoral traffic (Prevention) Act 1956. This is intended for longer period of stay. It provides care, treatment and training in vocational programmes to women and girls. They also can have general education.

These institutions admit girls who are morally good. These girls are seeking admission for protection voluntarily. There are vigilance homes for women in Chennai, Coimbatore, Trichy, Salem and Madurai.

4.9.3.RESCUE SHELTER

There are six **Rescue Shelter** homes to receive and take care of girls and women during their trials by the courts. There are two short stay homes under voluntary agencies they admit girls and unwed mothers. These institutions receive grants through the "Department of social welfare".

The protective homes are under the control of the Department of Correctional Administration.

The protective homes are of **three** types.

They are :-

a) Rescue homes

b) Vigilance homes

c) Vigilance **Rescue** Shelters.

Vigilance "**Rescue Shelters**" are only for short stay. In this shelter the custody of girls and women are given, while they are facing trial under Suppression of Immoral Traffic in Women and Girls. This act is now renamed as Prevention of Immoral Traffic Act.

On conviction the women and girls will be sent to "Vigilance Home".

Rescue homes are to rescue girls below 21 years of age. They are rescued from brothels and those who are exposed to "moral danger" in society and require care and protection in the institution is also rescued here. Women who are pregnant by illegtimate means are also admitted for shelter and protection.

4.9.4.OPEN PRISONS

Semi-open prison institution called the "wit z will" establishment was set up in Switzerland at the end of nineteenth century.

Open Prisons :- In the United Kingdom around 1930 and in United States around 1940 open-prisons were established.

Thus open prisons are "**Minimum security**" devices for Inmates to rehabilitate the in society after their release.

The United Nations "**Congress**" on prevention of crime and treatment of offenders held in Geneva in 1955 made an attempt to define an "**open prison**".

An open institution is characterised by the absence of material and physical precaution against escape such as walls, locks, bars and armed-

(Space for Hints)

guard and by a system based on self-discipline and innate sense of responsibility towards the group in which he lives".

The philosophy underlying these "Minimum security" is based on the following basic assumptions.

1) A person is sent to prison as punishment and not for punishment.

2) A person cannot be trained for freedom unless conditions of his captivity and restraints are considerably relaxed.

3) The gap between the institutional life and free life outside the prison should be minimised so as to ensure the return of inmate as a law-abiding member of society.

4) The dictum **"Trust begets Trust"** hold good in case of prisoners also. Therefore if the prisoners were allowed certain degree of freedom and liberty, they would respond favourably and would not betray the confidence reposed in them.

Advantages of open-Air-prisons

The advantages of the open prisons are as follows.

1) It helps to reduce population in jails

2) No new construction necessary.

3) Administrative problems and maintenance cost farless than the enclosed prisons.

4) The inmates of open-air-prisors are engaged in productive work and therefore they are physically and mentally fit.

5) Open-air-prison helps in conservation of natural resources. It also widens the scope of rehabilitation.

The scheme of open-air-prison for the prisoners is based on probation and parole. In the state of Uttar Pradesh for the first time open-air-prison

Check Your Progress

4. What is a special Home?
5. What are the Women Institutions?
6. "Open air Prison" Write short Notes.

was set up. It was guided by Dr. Sampoornananth. The West Bengal Film Director and producer Satya Jith Ray made a film "Dho ankan bara hath" giving importance to this psychology of open- air- prison. In Tamil also "Pallandu Vazhha" was acted by Dr. M.G.Ramachandram former Chief Minister of Tamil Nadu.

(Space for Hints)

In Tamil Nadu we have open-air-prisons one at Singanallur and the second at Salem, the Third at Sivaganga. Come December, the 84 acre patch of land near Kalaiyarkoil in Sivaganga Would be abuzz with cultivation of a variety of Medicinal Herbs. Not that agriculture is new to Sivaganga but the People who are involved in the farming would be prisoners.

Some 40 years after an open air Jail was started in salem. The state prison authorities have established an open air jail at Kalayar Kovil in Sivaganga. Where chosen inmates with agricultural background from across the state would be moved. "The inmates would be cultivating various native crops like topica, groundnut and flowers. But we have planned to give a thrust on cultivation of medicinal herbs" said D.I.G. (Prisons) Mohamed Hanifa. Soil tests were done and the land was found to be ideal for the crops.

The Open air Jail at Kalayarkoil, likely to be inagarated by the month end of November 2013, and is third such facility - often called "prison without bars" in the state and first in south Tamil Nadu. The First such correctional facility was opened at Singanallur in coimbatore about 50 years back and the second was started in salem shortly after words.

Only 150 chosen inmates will be lodged in the prison. Unlike conventional prison, the open air prison do not have cells, fortifications or tight security. Inmates will be put in large dormitories to enable "Socialisation". With the rest. "Of course there would be fence". But inmates are free to move around the sprawling campus during the day, Hanifa said. He pointed out that as there are only 150 inmates - more space for each prisoner unlike conventional jails. This will have huge imbage on the minds of the inmates. They would be relieved of depression" he said.

(Space for Hints) However the inmates would not be permitted to leave the prison to pursue their vocation outside the campus during the day like the way some open air prisons in states like Himachal Pradesh and Bihar allow.

"But there would be greater freedom inside the Prison Campus" says Madurai Prison superintendent R.Arivudainambi. Inmates of the open air jail would be also given one day of remission of their sentence for every day spent in the prison he said.

The Prison authorities are screening the lot. "They should have a clean record during the sentence. There should not be a tendency to escape for Kalyarkoil jail. We are looking for inmates who have agricultural back ground" - said a prison officer.

Open-air-prisons differ from conventional prison: They are

1) No maximum security -No walls -No barbed wire -fencing- No locks, No bars, No hand-cuffs

2) There is no greater contact of person with the outside world. It will develop among a sense of responsibility among themselves and as well as the society.

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4.10. SUMMARY

A person who is below the age of Eighteen is called a Juvenile. When he commits an offence he is called as a Juvenile offender. He is also called Juvenile in conflict with law. This may be due to so many factors - like poverty, richness, Psychological, sociological. The Juvenile delinquency is dealt with the law called Juvenile Justice (care and protection) Act 2000 as amended by 2006. In this lesson we have sean how a child is treated by law - how he is taken care of by the law - by the Juvenile Justice Board and child welfare committee.

4.11. KEYWORDS

1. Juvenile Justice	-	Justice rendered to a child.
2.Juvenile Justice Board	-	A group of People Like - Judicial Magistrate and Two social workers.

3. Child Welfare Committee	-	A group of five persons. Chier person and four members. One will be a woman and three experts.
4.Special Home	-	Homes which are meant for reception of the child in conflit with law.
5. Cumbrous	-	trouble some

4.12. ANSWERS TO CHECK YOUR PROGRESS.

For Question No. 1. Refer Para. 4.1

For Question No. 2. Refer Para. 4.2

For Question No. 3. Refer Para. 4.3.

For Question No. 4. Refer Para. 4.4

For Question No. 5. Refer Para. 4.9

For Question No. 6. Refer Para. 4.9.4.

4.13. MODEL QUESTIONS

1. Examine the salient Features of Juvenile Justice Board.
2. Examine the Merits in Open - Air Prison.

PART -III

LESSON-5

INSTITUTIONAL CORRECTION PROGRAMMES

INTRODUCTION

Institutionalisation will mean treatment to get cured of from "Faulty Mind". Only "Faulty Mind Produce "faulty acts" - called criminal acts. Institutionalisation serves many purposes. In hospitals when a person is admilted he is observed for some time. His disease is studied and prescribtion is given and the patient takes the medicine. If that medicine does not cure he is given some other medicine. Likewise Institutionalisation serves to observe the person.

1. To see whether he is an undertrial person for small offence or serious offence.

2. To see Whether is suspected of Criminal relating to body offence or property offence.

UNIT OBJECTIVES

We are to study what are the probloems faced by institution - towards Boarding, Lodging and Medical care, food, cloth, water, Hygenic Conditions etc.,

UNIT STRUCTURE

Introduction

Unit objectives

Unit Structure

(Space for Hints)

5.1. Boarding Lodging Medical care

5.2 Educational Programme

5.3. Works Programmes

5.4. Summary

5.5. Keywords

5.6. Answers to check your progress

5.7. Model Questions.

Under this lesson we will study

a) Boarding; Lodging and Medical care

b) Education programmes and

c) Work programme

Hospitalisation will mean treatment to get cured from illness. Institutionalisation will mean treatment to get cured of from faulty mind. Faulty mind will produce faulty acts or criminal acts. Institutionalisation serves many other purposes also.

1. It is placement of under trial persons.

2. It is placement for suspected criminal offenders; and civil offenders:

There can be a sea without waves but there cannot be a society without crime and criminals. We want to have a society without crime. **"So we try to eliminate the criminals from committing crimes"**, by putting them in prison. This is called by the name "Prisonisation" It reflects the society's reaction towards crime and criminal.

What are the problems faced by the society while placing the offenders in prison. The society faces problems like food, cloth, shelter, medical care. So also Boarding lodging and medical care are problems faced by the society while placing the offenders in prison. It is a common feature.

5.1.BOARDING, LODGING AND MEDICAL CARE

(Space for Hints)

The quality of good and quantity of food is more important for the prisoner as is necessary for every man.

As far as Tamil Nadu is concerned there is a nutrition and diet specialist in Madras Medical college and Hospital. He has given a chart regarding calorific value of the diet that should be given to the inmates of the prison. That chart is followed in all the prisons of Tamil Nadu.

Clothing is poor in the state of Tamil Nadu. Only old pattern is followed till now. It is also necessary to prescribe minimum articles of bedding. The authorities must ensure that these clothes are kept clean.

Medical officers are appointed and hospital staff are also provided. After emergency justice M.M. Ismail went into the question "emergency excesses in the Central prison Madras. He found out that medical attendance is very poor and doctors had not performed their duties and they were negligent. So full time qualified medical officer and hospital is a must in every central prison. Visiting medical officers like Dental surgeon, and psychiatrists attend special cases.

When patients deserve more care and attention and in case where more Medical facilities are necessary the offenders are sent to the nearby Government General Hospitals.

Games, indoor and out-door must be activated so as to promote the physical and mental health of the prison inmates. In Borstal school sports are held regularly. Likewise interprison sports should be held regularly as it was held at Coimbatore some time ago. Games must find a place in regular activities of the prison.

5.2.EDUCATIONAL PROGRAMME

Education is acquisition of knowledge, skills and values. It is a necessity. In the prisons three "R"s are taughts. It is a continuous process. Education should be meaningful purposeful.

(Space for Hints)

What are the Three R's

Reading, Writing and Arithmatics are so called. The inmates are taught these three things. It was once thought that by Education criminals will commit more and more crimes. Nowadays educated people does intellectual crimes. "Computer crimes" and "cyber crimes" are coming more and more. One person from Manila had sent through out the world a computer virus called "I love you" and had made the computers corrupteed. Thus it is proved that educated criminals will commit intellectual crimes. "Forgery" and "document" crimes belong to this category. Prison education develop abilities, knowledge is widened, improve their technical knowledge and professional skills. It is only aimed at development.

In India what is the aim of "Prison education?"

The aims are

1) To remove illiteracy
2) To strengthen democratic ideas
3) To develop national integration
4) To remove poverty
5) To develop self-emPloyment
6) To control population
7) To develop healthy environment

Check Your Progress

1. Write short Notes on Boarding and Lodging and Medical care.
2. What are the three R's ?
3. Define: "Work progress".

Distance Education

It is not an education which "Ekalivan" had done in the past "learning without a teacher". It only means "Correspondence education". "International council for" correspondence Education" has changed into international council for **"Distance education".**

It is only through a teacher the prisoners learn.

Why prison education?

Prison education is not out of charity, not out of sympathy, not out of duty but out of the National Responsibility.

5.3.WORKS PROGRAMMES

The purpose of prison "works programme" is well redefined. They are:

i) to infuse discipline and self-discipline.

ii) for the preservation of physical and mental health.

iii) to acquire specialized training to earn their livelihood when they return to their society.

iv) to utilize the sentence period in a useful and purposeful manner to mitigate rigorous monotony: and

v) for the realization of value of the punishment.

There are diversified labours in prisons such as spining, making envelope, furniture manufacture, soap manufacturing, phenyl, coirs, mats, fancy articles, sericulture techniques and so on. Mini industries and agriculture are also provided as a vocational avenues. Prison labour is productive and keeps the life of the prisoners without much of monotoniety. There are different views that labour and skill specially learnt in the prison is not fully utilized when the convict actually steps into the real outside world after release due to **"criminal labelling".**

5.4. SUMMARY

In this lesson we have studied the treatment process of the offenders - through different kinds of institutions. In the wistitution the food given to the inmates are chartered by a untrition and diet specialist from Madras Medical college and Hospital. That chart is followed in all the prisons of Tamil Nadu.

Good and healthy food gives good health to the patiants called offenders. This gives the healthy mind to learn. The prescrited minimum articles of bedding is also given to the offenders. To keep the offenders physically fit Medical officers, Dental surgeons and Psychiatrists also attend the Jail to serve the inmates.

Games, indoor and outdoor is also provided to the inmates of the Jail. They also watch T.V. and cinema. Three R's - are taught to them. Prison education is considered to be more important. Now days they study by correston dance course also.

5.5. KEYWORDS

1. Three Rs - Reading, Writing arthe matics

2. Prison education - Learing - which includes personality development, Moral values etc.,

5.6. ANSWER TO CHECK YOUR PROGRESS.

For Question No. 1. Refer Para. 5.1

For Question No. 2. Refer Para. 5.2

For Question No. 3. Refer Para. 5.3

5.7. MODEL QUESTIONS

1. What is Prison Education ?

PART III

INSTITUTIONAL CORRECTION PROGRAMME (CONTINUED)

LESSON 6

INTRODUCTION

Correctional Programmes are of two types, First is the correctional programme of the prisoners inside the prison. When the Patients are admitted in the Hospital they do not like the Hospital and the Hospital environment. Slowely they accept the hospital environment. Slowly they accept the hospital the doctor and other Hospital staff then the Patients, learn to follow the instractions given by them. They take the inmates as friends. When the get cured off, they go out of the hospital and they often visit their friends in the hospital, talk to them console them, they also pray for their good health. So also the prison, when they are brought to the prison, they do not like the prison, high walls, the Police authorities and other staff. Slowly they learn to respect the prison authorities. The prisoners follow the instructions given to them, whatever may be the language of the Prisoners they talk to their inmates. They take part in their sufferings share the joys and sorrows. Whatever the culture they follow outside the prison, the prisoners will follow the prison sub-culture. They accept the society of each other and they accipt the society of prison authorities as well. How this happens.? We will see in this lesson.

UNIT OBJECTIVES

In this lesson we will study about the prison - its structure - how the prison is governed. The Honour system - in this system - good behaviour is rewarded and the prisoner is given remission. We like self - respect, like wise

(Space for Hints) the honour system is respected; self - Governance - no body to govern - the prisoner is governed by his own conduct. The working of the prison is seen in this lesson.

UNIT STRUCTURE

Introduction

Unit Objectives

Unit Structure

6.1. Self - Governance

6.2. The Honour System

6.3. Group Therapy

i) In Tamil Nadu

6.4. Prison Culture

6.5. The Theif sub- culture

6.6. The convict Sub-culture

6.7. The straight - Sub-culture

6.8. How to modify the prison culture

6.9. Rights of Prisoners

6.10. Right to be free from Torture

6.11. Right to Legal aid for prisoners.

6.12. Summary

6.13. Keywords

6.14. Answers to check your Progress.

6.15. Model Questions.

Under this lesson we will study - High lighted points.

(Space for Hints)

a) Self Governance

b) Prison Culture

c) Rights of Prisoners -[constitutional and legal aspects]

d) United Nations Standard Minimum Rules for Treatment of Prisoners.

6.1.SELF GOVERNANCE

In the year 1919 and 1935 by an Act (Law) British Government wanted to Train Indians about self-Governance. At that time India was ruled by England we have not accepted that somebody should be above us to rule us.

Likewise we the people try to teach the prisoners about self-Governance. Will they accept?. Because we are some body over and above them to rule them. However we try to socialize the prisoners by introducing "the concept of self-Governance".

This group-relations principle of intervention also has been recognised in programs designed to develop a prison social life somewhat comparable to the social life outside prison.

One basis for such programs is the "Notion" that if prisoners are to be changed, they must be permitted to participate in social situations that are to some extent representative of the kinds of **"non criminal"** social interaction in which they will be expected to participate after release.

Another basis is the hope that inmate participation programs will simplify administrative problems of discipline and control. One of the earliest specific attempts to promote social interaction among prisoners was the development of **"Self Government System"**.

In the **"Massachusets"** state prison about 1845, the prisoners were orgainsed into a society for improvement and mutual aid, primarily by discussion of topics of interest to the prisoners, the warden was president of the

(Space for Hints) organisation, and it was clearly not spontaneous but was imposed upon the prisoners. Thomas.M.Osborne became the chief advocate of self-government. [see Society and Prison, Yale University Press 1916] "Damocracy for law Breakers" had to two principal objections. **"First, if the council"** in fact has any power to govern, it tends to be controlled by inmates who maniplate it to their own advantage. Powerful prisoners use the weapons of imprisonment, including solitary confinement and deprivation of privileges, against inmates who do not do their bidding.

After a trial of self-government for about a year, the inmates of the **"New Jersy"** state Reformatory abandoned it by a vote that was practically unanimous.

As in the out-side world, ward politics had developed; cliques were formed, the shrewd prisoners were elected to offices, and prisoners against whom grudges were held were punished.

At first, this did not disturb the order of the prison, for the old, custodially oriented inmates gained election to a majority of the seats. Gradually, the council was taken over by younger inmates, who referred to themselves as a "Syndicate" and who used the privileges granted as devices for demanding even more privileges, a wave of violence, disorder, and anarchy then occurred.

The second principle objection

Inmate councils have tended to become mere **"window dressing".** They are made up principally of inmates called **"square Johns"** or **"Do-Rights"** and these type of inmates do not have the respect of the real inmates leaders. They take actions that are of little significance to the government of the prison, and all their actions are subject to VETO by the warden.

A principle activity of contemporary inmate councils, is one of communicating inmate preferences in respect to recreational matters- the movies and television programs to be shown, and the radio programs to be received on the headsets provided in the cells. The council also organised various safe

activities, such as athletic tournaments and campaign for blood bank donations.

(Space for Hints)

These experiences with self-government do not necessarily show that it will be impossible to establish successful self-government systems in future. It should be recalled, however, that the current system of imprisonment is so designed that inmates can have no loyality to the prison that keeps them confined, and no loyality to any majority of their fellow prisoners.

6.2.THE HONOUR SYSTEM

The Honour ststem is similar to self-government only in that it places responsibility upon prisoners and gives them a chance to make choices. Under the honour system the prison officials grant, as rewards for good behaviour and loyalty, privileges that are conditional upon continued good behaviour and loyalty. The loyalty is partly to the officials and partly to other inmates.

The prisoners who are-given privileges or other rewards in return for a promise not to escape or violate prison rules do not want other trusted prisoners to suffer in case they break the trust. Further, because the other prisoners want the privileges, they help the officials control the potential violators. It is obvious that most criminals cannot be converted into persons of honour and transformed into non-criminals simply by saying "From now on I am going to trust you". Although inmates released from honour camps and minimum security honour institutions have lower parole violation rates and recidivism rates than do other prisoners, this record might be due merely to the fact that only those who are considered most likely to reform are permitted to participate in such programs.

6.3.GROUP THERAPY

Group therapy was considered a system similar in principle to self-government, for changing prisoners by giving them experience in social groups. Small group of inmates met regularly and discussed their problems; a therapist guided the discussion.

(Space for Hints)

Group psychotherapy and "Group counseling" and "Group psychoanalysis" grew out of the difficulty of treating cases of mental disorder individually.

In **"California Department of corrections"** administrators said they were convinced, thalt particpation in their **"group-counseling"** program lessened endorsement of the inmate code [positive attitude change] reduced prison disciplinary reports, and lowered the likelihood of being returned to prison. Group therapy programs merely attempt to provide permissive situations that enable inmates both to discuss their problems with each other freely and to ventilate their "suppressed hostilities" towards, court, the police, and the prison.

According to the proponents of the **"Clinical Principle"**, this "reforms" inmates by enabling them to "get rid" themselves of certain individual emotional disorders that are considered the causes of their criminality.

"Group-counseling" programs are based, on **"Four principal assumptions"** Three of these assumptions a.re consistent with clinical principle, and only one with group relations principle. .

First there was an assumption that free discussions of an inmate's problem and personality characteristics by and with an inmate group and a therapist will both enable and force the inmate to **"face-the-facts"** by **"getting beneath the surface"**.

Second, it was assumed that stimulation to "face to face" will give inmates "insight" by enabling each to see that problems of criminality are due to such attitudes as **"resentment of authority"** or "feelings of guilt" or **"Frustration"** such insight, combined with reform the individual. This is obviously in keeping with the notion based on clinical principle, that criminals who are able to dissipate the "tensions" and "anxieties" arising from emotional disturbances will be reformed.

Third, it was assumed that group counseling will give each inmate experience in accepting the analysis, opinions, and arguments of others with inmate group. and that this, inturn, will give each person needed practice in accepting the general **"restrictions of society"**. This assumption is consistent with the

individualistic, clinical notion that there is a war between" the individual because of somthing in the makeup of the individual, **"breaks through"** the restrictions of **"society".** One variety of this idea in criminology is that the individual, because of something in the "makeup of the individual", "breaks through" the restrictions of society and follows criminal patterns. For reformation, the something in that person must be modified, and this can be done in a clinic.

A **fourth** implicit assumption was consistent with the group-relations principle. It was expected that each participants in the group sessions gains experience in the role of law-abiding person, and that this experience will carry over to the life outside the session and outside the prison. Here, the reformative effect of the sessions was considered as operating not on the inmate whose criminal behaviour and attitude are analysed and denounced, but on the inmate doing the analysing and denouncing.

The astonishing feature of **"Group- Therpy"** is that rarely deals with **"Natural group"** in prison.

6.3.1. IN TAMIL NADU

Jail reforms commission decided to allow the prisoners to take part in the prison administration. Tamil Nadu had "Inmates committee in Borstal school". It was extended to prisons as well. **"Prisoners Panchayat"** was first introduced as a trial in Central Prison Madurai. The object of the prisoner's Panchayat Board is "to induce a spirit of good neighbourliness among prisoners to encourage them to be civic minded and to create a sense of responsibility and self-reliance among prisoners".

Prisoners are required to elect 12 representatives. They are divided into three groups one group looks after diet. Another group looks after cultural activities. Another group looks after sanitation. This panchayat meets once in a fortnight. The superintendent presides over. The panchayat is empowered to enquire into minor complaints. Common grievances allowed to be represented.

(Space for Hints)

6.4. PRISON CULTURE

Prisonization

One of the amazing things about prisons is that they **"work" at all.** Any prison is made up of the synchronized actions of hundreds of people, some of whom hate and distrust each other, love each other, fight each other physically and psychologically, think of each other as stupid or mentally disturbed, manage and control prestige, power and money. Often the personnel involved do not know with whom they are competing or co- operating and are not sure whether they are managers or the managed. But despite these conditions, the social system that is a prison does not degenerate into a chaotic mess of social relations that have no order and make no sense. Some how the personnel including the prisoners, are bound to gether enough so that most conflicts misunderstandings are not crucial- the personnel remain **"Organized" and 'the prison' continues to work".** Viewed in this way. the prison is a **microcosm** of the larger society' that has created it and that maintains it, for this larger society also is a unit that contin to "Work" despite numerous individual disagreements, misunderstandings, antagonisms and conflicts.

Offenders entering a prison for the first time are introduced to the culture in much the way children are introduced to the ways of behaving of their elders. The general process by which children are taught the behaviour patterns of the group is called **"socialization"** and the somewhat comparable process among inmates has been named **"Prisonization".** However like a person moving into a new culture, the new inmate usually must unlearn some former behaviour patterns in addition to learning new ways of behaving. Also unlike the situation in socialization is the fact that inmates are by no means neutral toward accepting or rejecting the behaviour patterns presented to them. Regardless of these personal characteristics, all persons entering a penitentiary undergo prisonization to some extent if only because they must undergo the process of being assigned a number a standard set of clothing and a standard hair-cut. All inmates who are new to a particular prison must learn "the rules" and the many technical details of prison living. In this phase of

prisonization, the inmates are essentially outsider. The inmates change their personal habits to comply with the folkways of the prison.

(Space for Hints)

Gradually the new inmates are subject to pervasive influence. They accept their inferior status and grow accustomed to having their names replaced by numbers. They realize from the guard's point of view that they are anonymous figure. They begin to realize the fact that in many respects the prisoners control the life in the prison and not the administration. All inmates are subject to these pervasive aspects of prisonization, They are swallowed up by the prison.

The prison culture contains other patterns that are learned and accepted by some prioners. These prisoners learn to gamble, to participate in homosexual activities, to love and to hate and distrust prison officials and generally outsiders. They not only accept the prescribed prison code, they attempt to enforce. They not only hear the prison dogma they begin to spread it.

All inmate undergo prisonization. The prison culture is not peculiar to the prison at all. Prison code are part of criminal code. Many inmates come to any given prison with a record of several terms in correctional institutions and they bring with them a readymade set of. patterns which they apply to the new situation, just as is the case with participants in various outside criminal subcultures. A clear understanding of inmate conduct cannot be obtained simply by viewing "Prison culture" or inmate culture as an isolated system springing solely from the conditions of imprisonment.

A distinction must be made between the "Convict sub-culture" which arises within institutions and the "thief subculture" and "straight subculture, both which are carried into prisons by criminals.

6.5.THE THIEF SUB-CULTURE

The core values of thieves operating on the street correspond closely to the values that prison observers have ascriped to the type of inmates called the "Right Guy"or "Real man".

(Space for Hints)

High status as a "Politician", shot, "merchant" peddler is based principally on conduct with in the prison, but status as a "Right Guy" depends as well upon participation in the 'criminal' or 'thief' subculture that exists outside prisons. In the thief subculture, a person who is known as "right" or "solid" is one who can be trusted and relied upon. High status is also awarded to those who posses skill as thieves, but to be just a successful thief is not enough, there must be solidness as well.

6.6.THE CONVICT SUBCULTURE

There exists in prisons a subculture that is by definition a set of patterns that flourishes in the environment of incarceration. This is the "Convict subculture," which can be found wherever people are confined. Such organisations are characterised by deprivations and limitation on freedom, and in them available wealth must be competed for by inmates supposed on an equal footing. It is in connection with the "Maintenance" of this subculture that it is appropriate to stress the notion that a minimum of outside status criteria are carried into the situation.

The convict subculture is oriented to manipulating the conditions of prison life, not to an honourable and proud life as a thief. Prison argot identifies some of the prisoners participating to this subculture as "merchants" peddlers "shots" and politicians. Nowadays inmates tend to use a single term to refer to all of them - "Convicts".

Prisoners playing this role do favours for their fellow prisoners in direct exchange for favours from them -it may be for payment in cigarattes, the medium of exchange in most prisons.

Most of the favours involve distribution of goods and services that are supposed to go to inmates without cost -the **"Merchant"** - charges a price for dental care, laundry, food library books, good job assignment and so on. The central value of the convict subculture is **utilitarian**, and the most utilitarian individuals win the available, wealth, privileges and positions of influence.

Also oriented to the convict subculture and to manipulating prison life and inmate who exhibit highly aggressive behaviour against other inmates and against officials. They are likely to be called **"Gorillas"** depending on the prison. The terms are all synonyms referring to inmates, likely to be diagnosed as psychopaths by psychiatrists, who attack guards and fellow inmates verbally and physically, who force other inmates to pay for cell and job assignments, who run any **"Kangaroo court"**, who smash up the prison at the begining of a riot. These convicts offer protection to weak inmates for a fee, but, like "merchants" they actually exploit other inmates while seeming to help make prison life easier for them.

6.7.THE "STRAIGHT -SUBCULTURE"

A final category of inmates is oriented to legitimate activities. Prisoners with this orientation are called **"Straight"**, **"Square Johns"**, "darights and so on. This category includes inmates who are not members of the thief-subculture upon entering prison, and who isolate themselves -or are isolated - from the thief and convict subculture. They makeup a large percentage of the population of any prison, but they present few problems to prison adminstratiors.

6.8.HOW TO MODIFY THE PRISON CULTURE?

If the prison is to be efficient as an institution for changing criminals, the **"Esprit de crops"** or public opinion among prisoners must be changed. No amount of individual theory, vocational education, or coercion will do this. In addition, there is little reason to think that the prisoners themselves will develop self-government or other community organization favourable to changing the prison sub-culture.

The leaders of the prison population look upon themselves as enemies of society, and on society as an enemy of prisoners. They are not to be induced in ordinary prison circumstances to shift their attitudes. Similarly, so long as the prison is expected to perform its retribution and deterrence functions it is doubtful that the prison community can be greatly modified to bridge the charm separating the social world of the insiders and the out sider.

The organization of prisoners is in part a reaction to the repressive aspects of the prison's administrative organization, and it therefore seems to be modifiable only slightly or not at all as long as the administrative organization efficiently performs the duties society assign to it.

6.9. RIGHTS OF PRISONERS (Constitutional and legal)

AND

United Nations Minimum Rules for Treatment of Prisoners

The United Nations organisation formed the Universal Declaration of Human Rights Amnesty International contributed to this movement by prescribing standard minimum rules for treatment of prisoners. The European Convention on Human Rights created machinery for the protection of human rights in the form of Human Rights Commission, Based on this National Human Rights Commission was formed in India. This commission has powers to intervene in the cases of infringements of Human Rights with regard to prisoners also

1) Whether the constitution has recognised the rights of the prisoners?
   Yes! The Constitution of India has recognised the rights of prisoners. The prisoners do have constitutional Rights as a weapon to interpret the rights of prisoners.

2) What are those rights recognised by the courts which are implicit in Article 21 of the Constitution?

The courts have recognised mainly the following rights which are implicit in Article 21.

Those are :-

1) Right to be free from torture and maltreatment

2) The right to legal aid

3) Right to speedy trial

4) Right to compensation

6.10. RIGHT TO BE FREE FROM TORTURE

Some important cases Relating to Right to be free from Torture

In Francis Coralie Mullin -Vs -Administration, Union Territory of Delhi. [AIR 1981 S.C. 746] the Supreme court held that"there is implicit in Article 21, the right to protection against torture and inhuman and degrading treatment".

In Rakesh Kaushik-Vs-B.L. Vig. Superintendent central Jail Delhi [AIR 1981 S.C. 746] and in several other cases the courts used this right to "ensure some minimum of social hygiene and banishment of licentious excesses".

In Sunil Batra II-Vs-Delhi Administration involved the claim on behalf of a prisoner whose anus had been penetrated and ruptured with a stick by a jail warden, the Supreme Court held that Article 21 prohibited mental torture, physical pressure and physical infliction and torture beyond the implicit limits of lawful imprisonment.

1. Is solitary confinement against to the spirit of Article 21 of the constitution?

Yes. "Solitary confinement" is defined as seclusion which totally excludes the prisoner from sight of other prisoners and from communication with other prisoners. Solitary confinement" is only to'be awarded by the court and not by the superintendent [Sunil Batra-Vs-Delhi Administration [AIR 1978 S.C. 1675] of the Jail.

The separate confinement of a prisoner with only occasional access to other persons is to be treated as "Solitary"

In Kishore Singh -Vs- State of Rajasthan [AIR 1981 S.C. 625] the

(Space for Hints) Supreme court said that solitary confinement may only be used in the "Rarest of Rare cases" and with strict adherence to the above procedural guidelines.

2.Is using the Handcuffs against the spirit of Aritcle 21 of the Constitution?

Yes. It is separately deal with, the Supreme Court has issued guidelines regarding the use of handcuff and fetters as forms of punishment and as "safe custody measures".

6.11.RIGHT TO LEGAL AID FOR PRISONERS

The right to legal aid is implicit as a part of Article 21 of the Constitution. In M.H. Hoskot-Vs-State of Maharashtra [AIR 1978 S.C. 1548] the Supreme Court stated that if a prisoner is disabled from engaging a lawyer on reasonable grounds such as **indigence** (poverty) on incommunicate situation, court shall, if the circumstances of the case the gravity of the sentence and the ends of justice so require, assign competent counsels for the prisoner's defence, provided the party does not object to that lawyer. In otherwords, if a prisoner is poor and cannot afford a lawyer the court, in most circumstances, must appoint one for him or her if one is so desired.

The state must pay for the appointed lawyer's services. Also in Hoskot's case, the Supreme Court discussed "the right to legal aid" during the appeal process. The Supreme Court held that any procedure or practice which restricts a person's right to appeal is unfair, and against the principles of natural justice and is therefore in **Violation of Article 21.**

The court stated certain requirements for a fair procedure under article 21 during appeals;

1) The convict shall be given a free copy of the judgement from the court within a reasonable period of time so that they may exercise their right to appeal.

2) If a convict seeks to file an appeal or revision every facility for exercising of that right must be available by the jail administration.

Check Your Progress

1. What is Honour system?
2. What is Group Therapay?
3. What is Prison Culture?
4. What are the rights of the Prisoners.?

3) Free legal aid should be provided to the convicts who is or otherwise unable to secure legal assistance provide "the ends of justice call for such services." (Space for Hints)

6.12. SUMMARY

Reform of the convicted person is the prime importance. He must be taught to live in this modern society. No man is normal and no society is normal. Then how to mold a convicted person to fit in the society which is ot normal. When a man in put in the prison the society and the world may look one thing. After release after 10 Years the world may be looking differently. The Political situation may change, the people and there attitute may change, even the city or, Town in which he has lived might have changed in its appearance. Now look at Chennai, to day's Chennai is not the same as five years age. If it is the case how to mold a convict offender to meet the situation and the changing world. It takes lots of effects by the correctinal administration and in the institutional correctin programome. So we have to socialize the convict by different methods.

6.13. KEYWORDS

1. Self - Governance - 1) to regulate one-self - by conduct

   2) Manner of governing one self.

2. Culture - the arts, customs and institution of nation, redefined understanding.

3. Rights - Normally good, justified, factually correction.

4. Offender - a person who violated a law
   - who committed an offence.

6.14. ANSWERS TO CHECK YOUR PROGRESS

For Question No. 1. Refer Para. 6.2

(Space for Hints)

For Question No. 2. Refer Para. 6.3

For Question No. 3. Refer Para. 6.4

For Question No. 4. Refer Para. 6.9

6.15. MODEL QUESTIONS

1. Explain self - governance
2. Analyse Honour system
3. Write short answer on "Group Therapy"
4. Explain prison Culture.
5. What are the rights of prisoners ?

Suggested Readings

1. N.V. Paranjepe
   - Criminology and Penology
2. S.Ghosh
   Open prisons and the imates
3. J.P.S. Sirohi
   Criminology and Penology
4. M.Ponnaian
   Criminology and Penology
5. B.K.Goswami
   Criminology and Penology
6. S.K. Bhattacharya
   Social Defence

PART -IV

COMMUNITY BASED CORRECTIONS

LESSON -7

INTRODUCTION

Probation belongs to the Domine of community corrections. It is putting the convict at liberty for a specific period under the supervision of a social worker. Now we call him as Probation Officer. Probation Officer is treated is an officer like an advocate. During this Period of Probation the convict remains liable. If he do not keep good conduct - he will be dealt with by the court. "Probation is one of the most important aspects of the development of the rational and social policy". In Probation the Probationer is treated out side the Prison. Probation is a major instrument of Policy. It is most important contribution to penal Practice. By leaving a convict on his own "Probation". He is being tried out in his own society whether he can live in free society without breaking the law of his own land. We all know that "not knowing the Law is not the excuse"

In this lesson we are going to see how the Probation Originated - When it came to India - What is its Position in India "now". What is the use of "Probation of Offenders Act. 1958."? This is an interesting area. Why ? The common Man can drink alcohol - and its products - but a man on Probation should not drink. Why this improssition of condition? All these are questions to be asked - but no answer.

UNIT OBJECTIVES

Unit Objective is to know about Probation generally and probation of Offenders act in Particular.

(Space for Hints)

Probation is a unique system in which the offender is sent to the society which has failed to socialize him. It may be a punishment to society which has failed to socialize a member of its own. This unit objective is to make the student understand about probation its concept. What is intervention. Historical development of Probation in India. When the Law relating to Probation is drafted and brought into force.

UNIT STRUCTURE

Introduction

Unit Objectives

Unit Structure

7.1. Probation - Concept and scope

7.1.1. Contribution of John Augustus

7.2. The terms and condition of probation

7.3. Intervention.

7.4. Probation - Historical development in India.

7.5. Summary

7.6. Keywords

7.7. Answers to check your progress.

7.8. Model Questions.

7.1. PROBATION: CONCEPT AND SCOPE

"Probation" means the conditional suspension of imposition of a sentence by the court in selected cases, especially of young offenders, who are not sent to prisons but are released on probation, on agreeing to abide by certain conditions. **Ideally,** probation is granted only after careful investiga-

tion and the probationer is subjected to supervision by a public or private organisation or by individuals in most of the cases. It has been observed "It is of course necessary that the courts should exercise their discretion wisely in the selection of cases to be placed on probation... In particular it should be pointed out that it is useless to place on probation persons of defective intellect.

(Space for Hints)

"The Morrison committee" has defined the probation. It observes :

"The submission of an offender while at liberty to a specified period of supervision by a social worker who is an officer of the court, during this period the offender remains liable, if not of good conduct to be otherwise dealt with by the court?" -**Chief Justice S.M. Sikri,** Probation, A Method of Rehabilitation of Offenders and Prevention of Crime.

Probation has been described by the Economic and Social Council of the United Nations as "one of the most important aspects of the development of the rational and social policy". U.S.A. and England had for a number of years used probation as a major instrument of policy and it has been regarded as "their most important contribution to penal practice". [Elkin. "The English Penal system].

The meaning of the term, **"Probation"** is that he is being tried out **(Pro bo, "I prove)** to see whether he can live in free society without breaking the law of the land.

Probation is the term. It is "used in connections with the release of an offender under suspended sentence and without imprisonment but under the oversight of a probation officer for a definite period of time and for the purpose of reclaiming him from evil course....".

It includes a positive method of dealing with offender. Although a conditonal suspension of sentence by the court is necessary, probation includes supervision, guidance and assistance to the offender.

This assistance has come to be the important part of the probation

(Space for Hints) system. Probation thus is a diversion program and an alternative to prison, but it is also of what recently has been named" community,. based corrections".

The suspension of sentence, and hence the threat of punishment, is always present in probation, and this is a reflection of a punitive reaction to crime. A suspended sentence is granted only if the offender is placed on probation, this notion that the offender should be guided and assisted is a reflection of the interventionist reaction to crime. Probation then represents a kind of compromise between the punitive reaction and the interventionist reaction.

A definition of probation that reveals this compromise may be stated as follows: "Probation is the status of a convicted offender during a period of suspension of sentence, in which the criminal is given liberty conditioned on good behaviour, and in which the state, by personal supervision, attempts to help the offender to maintain good behaviour. Court decisions based on information obtained in pre-sentence investigations of the offender's personality and back ground are implied.

The U.S. Supreme Court has stated that probation is to be used" to provide an individualised program offering a young or unhardened offender an opportunity to rehabilitate himself without institutional confinement under the tutelage of a probation officer and under the continuing power of the court to impose institutional punishment for his original offence in the event he abuses the opportunity. [Roberts -Vs -United States 320 U.S. 264].

The suspension of sentence that permits positive action to be taken may be either a suspension of the "imposition of the sentence" or the suspension of the "Execution of the sentence".

1) If the judge imposes a sentence and then suspends the execution of the sentence, and if the offender violates the probation, the judge merely orders the execution of the sentences.

2) If the judge suspends the imposition of the sentence, the court will in

case of violation of probation, have additional Information on which to base a decision regarding the sentence that should be imposed.

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Whichever method of suspending the sentence is used, it is a method of suspending punishment, and thus it is to be regarded as an alternative to imprisonment and to release without supervision. It is important to judge probation inrelation to these two alternative. It is frequently judged as though it were an alternative to imprisonment alone.

In England the common-law practice of suspending sentences for short period was extended, and courts began to suspend sentences indefinitely, permitting convicted offenders to remain at large on good behaviour. Some offenders were compelled to furnish a financial guarantee that they would maintain good behaviour, and in some instances restrictions were placed on their freedom. Then volunteers began to assist such offenders during the period of suspension of the sentence.

7.1.1. Contribution of John Augustus.

Among the early volunteers was **John Augustus**, a shoemaker of Boston who in 1841 secured the release of a confirmed drunkard from the police court of Boston by acting as surity for him. This offender turned out to be a **"Sober, industrious citizen"** under his care. Such volunteers became more numerous and were, in effect, "probation officers" before probation had been authorised by statute.

When investigations are made, they usually are made by regular probation officers. Using an analogy with medicine, these investigations are sometimes referred to as "diagnosis" because they provide the factual basis for, later individual or group treatment.

Walter.C.Reckless has formulated the scientific, interventionist principle as follows -An adequate pre-sentence investigatin not only indicates whether the defendant is probationable; it also gives clues as to the causes of the criminal behaviour, the possible extent to which he may be reformed or rehabilitated, and his need for a constructive probation program".

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Mr. Gross has similarly stressed the idea that a pre-sentence investigation seeks the cause of the criminality and then recommends a program of intervention based on this knowledge "The main function of the pre-hearing report in Juvenile court proceedings is to present the sociocultural and psychodynamic factors which influence the Juvenile's alleged delinquent behaviour. The pre-sentencing is supposed to give an objective, integrated, and perceptive evaluation so that the court can arrive at an individualised and rehabiltative disposition".

The ideal investigation covers such things as the person's attitude towards the offence, previous criminal record, family situation, neighbourhood, and other group associations, educational and work history, personal habits (such as use of alcohol and drugs) physical and mental health and perspective of life. Such ideal investigations are occasionally conducted in large scale probation departments where specialised officers can be assigned to the work.

Yona Cohn's study of probation officer's recommendations suggested that them officers are likely to collect objective information about the offender (eg. age; sex, religion) but to base their recommendations on subjective assessments of data not collected in a systematic fashion.

Probation investigation often is handicapped also by the fact that the investigator frequently is regarded as a detective by the offender and the other persons interviewed.

The absence of organised records is a detriment to probation investigation. Probation is used, primarily as a substitute for discharge without supervision and for imprisonment. The principle that should be used indetermining whether probation should be substituited for discharge withiout supervision is : "Does this offender need supervision and assistance in adjusting to community conditions, and will the offender benefit from this assistance and supervision"?

7.2.THE TERMS AND CONDITIONS OF PROBATION

The terms and conditions of probation are generally fixed jointly by the

legislature the court and the probation department. The following are generally imposed: observance of all laws, good habits, keeping good company, regular reports as required, regular work or school attendance, payment of fine or reparation, abstinence from the use of alcohol and drugs, aviodance of unnecessary debts. Often the probationer may not marry may not become divorced, or may not change residence without permission of the probation department. Sometimes the probationer is required to live in a specified place. The probationer may be required to undergo specific medical or psychiatric treatment. The terms and conditions must be communicated to the probationer.

(Space for Hints)

Payment of restitution, fines, or costs is frequently imposed not as a sentence but as a condition for being placed on probation. Here two objections are raised

1. Probationers may be required to pay so much that their dependents suffer seriously.

2. This interferes with other work of the probation department and makes it primarily a collecting agency and probation officers object to act as collecting agents, pricipally on the ground that the assumption of such duties destroys the confidential relationship necessary to constructive casework.

7.3.INTERVENTION

For about a quarter of a century, the fieldwork of probation officers has been called **"Treatment"**, just as the work of probation investigators has been called **"Diagnosis"**.

This terminology, based on a medical analogy, is incorrect in at least four respects.

1. Few pre-sentence reports are specific enough to be called "diagnoses"

2. Even if the ailment said to produce a person's delinquency or criminality were specifically diagnosed as, say, a defective ego, the probability is low that the diagnosis would be correct.

(Space for Hints)

3. The efforts of probation workers are mostly given over the surveillance or to the direct opposite, shielding the probationer from arrest not to making the probationer into a non delinquent or a non-criminal.

4. The efforts of probation officers that are not dedicated to surveillance matters or to routine report writing are principally educational, and we do not ordinarily think of education as "treatment".

. The Notion that criminals and delinquents should be placed on probation and thus guided and assisted is part of the interventionist reaction to crime. Even the negative notions, about changing criminals used in some probation departments are scientific because they assume that criminality is caused by something that can be modified if that cause is modified.

The psychiatric school of criminology has popularised the conception of "treatment" by insisting that proper probation work consists of giving the probationer "insight" into his emotional problems and thus into a personal motivations for committing crimes.

Differential -Association theory and **modern learning theory** ask probation workers to see the "attitude" and other behaviours of individuals as products of reinforcements occuring in the course of everyday social interaction. The learing processes that are of greatest importance in determining criminal behaviour patterns are those that are frequent and intimate, as in the family, the procedure for modifying those behaviour patterns necessarily involves changing the persons group relations.

7.4. PROBATION: HISTORICAL DEVELOPMENT IN INDIA

Check Your Progress

1. What is Probation?
2. Contribution of John. Angustus Analyse
3. What are the terms and condition in Probation Principle?
4. Who formulated the Scientific Principle?

History in England on this subject is given by Devlin thus "Before 1907 many courts adopted a kind of voluntary probation with the assistance of the voiuntary societies although it was employed without legal authority. The system was first given legal effect by "The Probation of Offender's Act 1907" : and its adm.inistration put on an orgainsed , basis by the Criminal Justice Act 1925. An Interesting account of the history is given by" J.E. Hall Williams In

his books entitled "the English Penal system In Transition". According to him it was as early as 1820 the "Warvlckshlre Quarter sessions" adopted the expedient in suitable cases of passing sentence of imprisonment upon condition that he returned to the care of his parent or master to be by him more carefully watched and supervised in the future".

In India the first legislative effort appears to be the the enactment of Section 562 in the Code of Criminal Procedure 1898. This section applied to offences of theft, theft in building, dishonest misappropriation, cheating or any other offence under the Indian Penal Code punishable with "not more than two year's Imprisonment".

By amendIng the Act of 1923 the legislature sought to extend the scope of law on probation to make It extrensively applicable to a wider classes of persons for larger number of offences together with extending the period of release on probation from one to "three year,".

The Indian Jail Reforms Committee's Report (1919-1920) suggested that the first offenders were to be treated more liberally and could even be released unconditionally after admonition.

The select committee on the amending Bill of the Act of 1923 had stated:

We have accordingly provided that any offender who is over the age of 21 years may be bound over on conviction of any offence not punishable with Imprisonment exceeding seven years and that all women and all persons under the age of 21, may be so bound over when convicted for offences not punishable with death or transportation for life".

The Indian Jail Committee (1919-20) which had taken up the matter before the amendment of the Act in 1923 had also given some attention to the then existing conditions Jails. the committee stressed that the administration of Indian prisons had lagged behind on the reformation side and observed:

"It had failed so far to regard the prisoner as an individual and has conceived of rather as a unit in the Jail administrative machinery. It has a little lost sight of the effect which humanising and civilizing influences might have on the mind of the individual prisoner.... The whole point of view needs to be altered, not merely isolated details, and the primary duty of keeping people out of prison needs to be more clearly recognised by all authorities and not the least by courts.

The progress made by the probation movement after it can be seen in view of the fact that the central Government decided in 1931 to enact a uniformly administered central legislation on probation.

A draft bill on the law of probation was prepared and was circulated to the provincial Governments to elicit suggestion and opinions. Before the efforts could be materialised, the Government of India became occupied with other important matters. It however, informed the provincial Governments in 1934, that it would not move further into the matter, and had no objection if the provincial Governments wanted to make their own laws on probation.

The probation laws enacted by the provincial Governments was not uniform. A probation conference was held in Bombay in 1952 on the advice of Walter. C. Reckless, who was the United Nations Technical expert on correctional services. Walter .C. Reckless addressed the conference and gave valuable suggestions on the prison administration in India.

All India Jail Manual Committee was formed to review the working of Indian Jails and suggest measures for reform in the system. On the report of the committee the Government of India decided to have a uniform comprehensive legislation on probation of offenders. So the Probation of Offenders Act came in to force in the year 1958.

7.5. SUMMARY

"Probation" means the conditional suspenstion of inposition of a sentence by the court in selected cases. Probation is a status of a person. Probation is being tried out to see whether he can live in free society without break-

ing the law of the land. Probation includes supervision, guidance and assistance to the offender. Probation is an alternative to prison. It is a community based correction. We have understood that probation is a compromise between the punitive rection and the interventionist reaction.

7.6. KEYWORDS

1. Probation..... A status of the offender.

2. Suspension of sentence -... Punishment is not carried out.

3. Interventionist... interference of third person.

4. Common - law - law which is not written

5. Diagnosis - a step in the treatment process - pre-sentence reports.

7.7. ANSWERS TO CHECK YOUR PROGRESS.

For Question No. 1. Refer Para. 7.1

For Question No. 2. Refer Para. 7.1.1

For Question No. 3. Refer Para. 7.2

For Question No. 4. Refer Para. 7.3

7.8. MODEL QUESTIONS

1. Write in detail about the concept and scope of probation?

2. Write short notes on the contribution of walter. C. Reckless.

PART IV

COMMUNITY BASED CORRECTIONS

LESSON - 8

PROBATION LAWS

INTRODUCTION

According to Modern penal Philosophy, society has to live with the offender, because the society only has produced the offender, so the society deserves the offender. In the olden days the offender was removed from the society. The offender was transported from the place of residence, or his native place and put in some lonely place. The new philosophy is to help the offender, he will be asked to adjust with the society where is living we cannot adjust the society where is living we cannot adjust the society, to the needs of the offender, but the offender can adjust with the socity. He is put under the supervision of a "Probation officer". Probation officer is not a Police officer. He guides the probationer as a friend in need. Help the offender when he needs the probation officers help. Thus the offender is transformed into a good citizen. Who could understand the society.

UNIT OBJECTIVE

To study and understand about the laws relating to propbation. To analyse the probation of offenders Act - Judicial attitude, police attitude and peoples attitude about it.

UNIT STRUCTURE

Introduction

Unit Objective

Unit Structure

8.1. The Objects and reasons

8.2. Critical Appreciation of the Act.

8.3. Indian Penal code and Probation of offenders Act.

8.4. Appreciation of section.3.

8.5. Analysis of section.4

8.6. Probation procedure.

8.7. Revocation of Probation.

8.8. Summary

8.9. Keywords.

8.10. Answers to check your progress.

8.11. Model Questions.

8.1. THE OBJECTS AND REASONS AS IT WAS STATED (PROBATION OF OFFENDERS ACT. 1958)

"In several states there was no separate probation laws at all. Even in states where there are probation laws, they are not uniform nor are they adequate to meet the present requirements. In the meantime there has been an increasing emphasis on the reformation rehabilitation of the offender as an useful and self-reliant member of society without subjecting him to deliterious effects of a jail life. In view of the wide spread interest in the probation system in

the country, this omission has been re-examined and it is propos to have a central law on the subject which should be uniformly applicable to all the states".

It is proposed to empower courts to release an offender after admonition in respect of certain specified offences. It is also proposed to empower courts to release on probation, in all suitable cases. An offender found guilty of having committed an offence not punishable with death or imprisonment for life. In respect of offenders under 21 years of age, special provision has been made putting restrictions on their imprisonment. During the period of probation, offenders will remain under the supervision of probation officers in order that they may be reformed and become useful members of society. The Act seeks to achieve these objects.

According to modern penal philosophy, society has to live with the offender. This is a departure from the penal philosophy of olden days when "protection was provided by removal of the offender from the society. He was either hanged or transported" Now, another major object of the penal policy is to help the offender to adjust himself to society by putting him under the supervision of probation officers and other responsible persons.

The Judicial attitude, as regards the object of the Probation of Offenders Act 1958. has emphasised time and again that the Act is meant to reform and rehabilitate the offender.

The Supreme Court in Ramji Missar-Vs-State of Bihar [AIR 1963. S.C.1088] observed that the method adopted in the Act was "to attempt possible reformation."

In Ratan Lal-Vs-State[AIR 1965 SC 444] the Supreme Court said that the Act the regarded as a milestone as it was "the result of the recognition that the object of the Act was more to reform than to punish,". In other cases the court observed that "reformation and rehabilitaiton are the key notes of the Act, "In view of the above, the Act goes far beyond than let off after due admonition, emphasislng on reform and rehabilitation. Section 3 of the Act therefore, does not fit in the scheme of the Act.

8.2. CRITICAL APPRECIATION OF THE ACT

(Space for Hints)

When any person is found guilty of having committed an offence punishable under Section 379 or 380 or 381 or Section 404 or Section 420 of the Indian Penal Code or any offence punishable with imprisonment for not more than two years, or with fine or with both under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender it is expedient so to do, then, not withstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under Section 4 release him after due admonition.

Explanation :

For the purpose of this section, previous conviction against a person shall include any previous order made against him under this Section 3.

8.3. INDIAN PENAL CODE AND PROBATION OF OFFENDERS ACT

Section 3 applies to **"first offenders"** and is discretionary in nature and the court has to consider "the circumstances of the case including (1) the nature of the offence and (2) the character of the offender." But the section does not require the court to call for a report from the probation officer and therefore, the question arises on what facts the court is to decide the character and other factors of the offender?

Even Section 75 of the Indian Penal Code which deals with this previous conviction for the enhancement of the sentence does not help the court as is evident from the reading of the section itself.

The Section 75 lays down that persons once found guilty of an offence under Chapter XII or XVII of the Indian Penal Code and sentenced to a term of three years or more imprisonment may be awarded life imprisonment or im-

(Space for Hints) prisonment upto ten years term if again found guilty of an offence under anyone of the two chapters. These two chapters deal with offences relating to stamps and coins and property like theft. extortion, robbery and dacoity.

8.4. APPRECIATION OF SECTION. 3.

According to Section.75 of the Indian Penal Code the prosecution has to furnish a report of previous conviction of the offender who has been convicted previously and sentenced to an imprisonment for at least a period of 3 years or more, **where as Section 3** of the Probation of Offenders Act deals with the offences punishable for not more than two years imprisonment or petty offences punishable under Section 379 / 380 and 381 Indian Penal Code etc.

Though Section 3 of the Probation of Offenders Act provides that if "no previous conviction is proved against him, the court can release him under Section 3 of the Act after due admonition; but it is still not provided in the section, or otherwise, or how a magistrate can satisfy himself about the character including previous conviction and other relevant factors of the offender, and about the possibility of his not belonging to a group which was criminal propensities.

Another draw back of Section 3 of the Act is the inclusion of the Nature of the offences in it. like theft and cheating. These offences are generally committed by planning and not by sudden Impulse. These are in the form of Economic offences and cannot be treated liberally in view of the fact that the offences of the theft and cheating are on the increase and are against the interest of the protection of society mainly because mere release with admonition does not strike such terror in the mind of the offender that he will not commit it again.

From the point of view of the victim also the letting of the accused who has wronged him does not satisfy his and other's protection from the accused and other persons are planning to commit similar offences. This can be illustrated by a case from the State of Rajasthan, Dhan Ram-Vs-Rambaran [AIR 1970 Raj.129]. In this case the accused was convicted under Section 354 Indian Penal Code and released after due admonition under Section 3 of the Act. The indigent husband whose wife had been the victim filed an appeal and followed up by asking for a transfer of the case. In short the husband wasted a lot

of time and money because he was not prepared to accept that a man who insults and humiliates his wife in the field before others should get off so lightly.

In this context we can do no better than to quate professor Lotika Sarkari Who observed while commenting critically the provisions of Section 3 of the Act.

"In this context I would like to share with you the views of the superintendent of Tihar Jail. Few years ago when we visited the place he regretted the fact that most pick-pockets were let off the first time. He maintained that they were let off the first time. He maintained that they were caught the first time but their Modus Operandi would make it clear that this was not the first time they were pick pocketting. Moreover, most pick pockets, in his view acted in little gangs and therefore this release had no effect either on him or his friends"

Section 3 of the Probation of Offenders Act is also criticised on the ground that it does not require the court to call for a report from the probation officer and thus the court is not in a position to possess the information to decide the issue of character of the offender and other relevant factors.

It may also be added that the release of the offender without suoervision is not Restricted to Section 3 of the Act only. Even under Section 4 which is the key section in the Act, the court may release a person on probation on his entering into a bond with or without surities. Sub-Sections 3 of Section 4 however provides for an additional order of supervision if "in the interests of the offender and of the public it is expedient to do so". In other words Section 4 of the Act has not fully incorported "the philosophy of probation" in which supervision is an essential element. In fact Section 4 it appears, is a combination of a probation and the type of preventive action which can be taken by the court under the Code of Criminal Procedure against a vagrant or a person convicted of an offence".

As regards the calling for the report of the probation officer by the court, it may be observed that it is not only under Section 3 of the Probation of Offenders Act but in other Section 4 also, the court may not'take the benefit of the

(Space for Hints) report of the probation officer. For example Section 4(2) of the Act provides that before making any order, under, subsection (1) the court shall take into consideration the report, if any of the probation, officer concerned in relation to the case.

8.5. ANALYSIS OF SECTION. 4

The use of the words "if any after the words "the report" in subsection 2 of Section 4 indicate that the calling for the report of probation officer is not mandatory. As it is not necessary for the court to call for the report of probation officer in every case. It is impossible also because of the insufficient number of probation officer.

This view has its support from the recommendation of the National Correctional Conference on probation and Allied Measures. The relevant paragraph reads:

iii) As probation officers are not available in sufficient numbers, it was not considered necessary to drop the words "if any" occurring in Section 4(2). Further Section 6 (2) makes it clear that calling for the report under Section 4(2) is not mandatory. But the words "the court shall call for a report from the probation officer under Section 6(2) indicate that the calling for the report under Section 6(2) is mandatory: And omission of these words in Section 4(2) clearly indicates that the calling for the report is "Not mandatory".

The learned Judge Subba Rao who spoke for the majority in Rattan lal-Vs-State [AIR 1965, S.C. 444] said "If the probation officer for one reason or other has not submitted a report.... the calling for a report form the probation officer is a condition precedent for the exercise of the power under Section 6(1) of the Act by the court.

8.6.PROBATION PROCEDURE

In this lesson we have to study about

a) Pre-sentence investigation

b) Supervision

c) Revocation of probation

Pre-sentence Investigation

When we have discussed concept and scope of probation and Historic Development of probation in India and probation laws, We have discussed about Pre-sentence investigation Report. However we can see that Section 6(2) Of Offenders Act makes it mandatory to call for the probation officers report regarding the offender by the court.

Supervision

Probation is a status for the offender. So probation officer assists the offenders to make his way out from crime and criminals. There are some basic, terms and condition on an offender to be released on probation. They are

1) Probationer allows probation officer to make a home visit.

2) Probationer should not posses a weapon.

3) Probationer should not leave the state without the permission of the court.

4) Probationer should not use alcohol or drugs.

After the supervision period is over if the probationer keeps good conduct probation officer will terminate the probationer from supervision.

8.7.REVOCATION OF PROBATION

The basic purpose of the Act is to refine end reform the young offenders so that they could be brought back to the esteemed path of life and leave the criminal field Musha Khan -Vs- State of Maharashtra [AIR 1976. S.C. 2566].

In Siya Saran -Vs- State of M.P. [1995 Cri. L.J. 2126 S.C] the accused committed violence in a hospital against Doctors and staff which cannot be permitted and no benefit under the Act can be given to him.

(Space for Hints)

In Masarullab-Vs-State of TamilNadu [1985(1) All India Cr.L.R. 169(S.C.)] it was held that when family of accused is a respectable one, the accused who is also educated, not a regular offender and due to effect of panic has committed the offence, the accused can be granted benefit of Probation of Offenders Act.

Restrictions on imprisonment of offenders under twenty-one years of age -with regard to imprisonment of offenders under twenty-one years of age can be raised before appellate or divisional court when there is no disclosure that the age of the accused was below the prescribed age at the time of commission of offence Ashok Kumar-Vs-State1995 Cri.L.J 207 ori]

In superintendent central excise Bangalore-Vs-Babubati [AIR1979 S.C. 1271] it was held that to a convict under the Defence of India Rules, the Probation of Offenders Act are not applicable.

In Anandan-Vs-State [1999 cri.L.J. 1368 Mds] the accused was convicted under section 392 read with Section 397 Indian Penal code and sentenced to seven years of regorous imprisonment and the accused was already convicted for offences undersection 463 and Section 380 Indian Penal Code on his pleading guilty. Therefore he is not entilled to seek the benefit of the Act.

The "admonition" appearing in Section 3 of the Act is not defined anywhere in any statue. It is derived from the old French word "admonere". In Latin the word admoners conveys the same meaning, "ad" means "to" and "monere" means to "warn". Meaning hereby, to warn, to reprove mildly, kind reproof [V.J. Asabhai-Vs-V.J. Ugrabhai 1992 Cri.L J.881(Guj).

State-Vs-P. Raja Singh [1994.1.L. W.(cri)112 (Mad)] -offences under factories Act 1948 secticn 6(1), 7(1) and 92- are punishable with imprisonment for not more than two years and no previous conviction has been placed. Considering all these facts, the petitioner is released under Section 3 of the Probation of Offenders Act on due admonition.

In K. Soma Sundaran -Vs- State 1990 L.W Cr. 172(Mad) it was held that there will be no impediment in invoking the provisions of the Probation of Offenders Act for an offence under Section 406 Indian Penal Code.

(Space for Hints)

In a matter, accused committed an offence under Section 323 and Section 506 read with Section 34, non-consideration of Probation of Offenders Act or Section 360 of Criminal Procedure Code will result in acquittal of accused Jagat Pal singh -Vs- State of Haryana [1999 S.C.C. Cri. 1313].

Accused is liable to be released for his good conduct as he has already faced protracted criminal proceedings under the Prevention of Food Adultration Act, therefore under the prevention of Probation of Offenders Act he deserves to be released. Ghan Shyam Das -Vs- Municipal Corp.of Delhi [AIR 1975 S.C. 845].

Accused an offender punishable under Section 325 Indian Penal Code is liable to be released on good conduct when there are special mitigating circumstances and offender is of good character. Hamsa-Vs-State of Punjab [AIR 1977. S.C. 1991].

Provisions of Probation of Offenders Act are not available to a convict, who is sentenced to life imprisonment, but when due to High courts' decision accused is already on probation for the last six years the Supreme Court would not like to interfere in the matter [State of Gujarat -Vs-P.A. Chauhan AIR 1981 S.C. 359]

Auccsed was convicted under Section 9 of the Opium Act. Accused below 18 years of age at the time of the commision of the offence. He is a milkman by profession and not a previous convict and had already undergone agony of long trial for a period of 10 years. Accused entitled to be released on **"Probation"** [Pal Singh -Vs- State of Punjab [1996 Cir.L.J.3308].

Accused aged about 16 years and 9 months, was a bright and promising student hailing from respectable, cultured middle-class family. Accused coming under pernicious influence of evil company owing to immaturity and committing such crime for first time under the circumstances granted benefit of **"Probation"** [Rakesh-Vs-State of Gujarat 1996 Cri.L.J.1263].

In Daler Singh -Vs- State of Rajasthan [1999 Cri.L.J. 1471 (Raj)] it was held that the appellate court is not correct in cancelling the order extending the benefit of Probation of Offenders Act without giving personal hearing.

(Space for Hints)

In Mohammad Alias Biliya-Vs-State of Rajasthan [1999 Cri. L.J. 3509. S.C.] the appellant stood charged under Section 302 Indian Penal Code but convicted under Section 304 Part II Indian Penal Code. Admittedly the age of the appellant was less than 21 years on the date of occurrence. The appellant is entitled to be released on "**Probation**" on executing a bond to the satisfaction of the concerned magistrate for a period of two years.

In R.B. Syed-Vs-State of Gujarat [AIR 1982 S.C. 784] an accused who is above 21 years of age can be granted benefit of the Act, as the provision of Section 4(1) do not place any restriction towards age factor.

In Harikrishnan-Vs-Sukhbir Singh [1989(1) All. India Cr.L.R. 66(S.C.)], it was held that when an accused has committed the offence, in a sudden spur of moment and it was his very first offence, the benefit of this Act as allowed by Legislature can be granted to him

In Prabhu Ram -Vs-State of Haryana[1999 Cri. L.J. 1972] it was held that an appellate court can direct payment of compensation while releasing offender on probation.

In Ranjet Singh -Vs- State of Haryana [1990 Cri. L.J. P & H) it was held that the court was competent to award compensation to the injured while releasing a person on probation.

Union of India-Vs-Bakshi Ram[AIR 1990 S.C. 987] it was held in this case that in criminal trial the conviction is onething. The court while invoking the provisions of Section 3 of 4 of the Act does not deal with the conviction: it only deals with the sentence which the offender has to under go. Instead of sentencing the offender, the court releases him on probation of good conduct. The conviction however remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge. Section 12 of the Probation of Offenders Act does not preclude the department from taking action for misconduct leading to the offence or to his conviction thereon as per law. This section was not intended to exonerate the person from departmental punishment.

Check Your Progress

1. What are the Objects of Probation of offenders Act?
2. Appriciate Section.3 of P.O.F. Act?
3. Analyse Section.4 of the P.O.Act
4. Explain the Probation Procedure

In short Probation of Offenders Act is an Act favourable to the offenders but if he breaks the terms and condition he has to under go the sentence which is suspended for the time being.

8.8. SUMMARY

In this lesson we have studied about probation. How the probation started - its history - and how it developed as a correction of the offender. Society changes, law in the society changes, Morality of the society champes, moral value changes. So the offender and his correction process changes from time to time. It is always in progress. In India, report from the probation officer is a condition Procedent, to decide whether a person can be released on probation by the court.

8.9. KEYWORDS

1. Probation Officer - Probation officer is not a officer of the court. He is not police officer. He is an in dependent officer, who can decide on his own.

2. Judicial attitude - the intention of the judiciary - the decision making of a judge .

3. Society - Where people of different colour, different religion, different language live together willingly without any fear or favour.

4. Pre - sentence Investigation - Investigation done by the probation officer, about the good qualities of the offender - and a report submitted by him to court.

(Space for Hints)

8.10. ANSWERS TO CHECK YOUR PROGRESS

For Question No. 1. Refer Para. 8.1

For Question No. 2. Refer Para. 8.4

For Question No. 3. Refer Para. 8.5

For Question No. 4. Refer Para. 8.6

8.11. MODEL QUESTIONS

1. Explain the Probation procedure.?

2. What are the steps in revocation of probation.

3. Examine the salient features of probation of offender's Act.

Books for reference

1. Naresh Kumar -Constitutional Rights of Prisoners.

2. K. Chocklingam -Issues in Probation in India.

3. The Probation of Offenders Act - AIR Commentary & Journals

PART-V

LESSON-9

PAROLE AND AFTER CARE

INTRODUCTION

In Foreign countries like U.S.A. parole denotes a status of being released from a penal institution in which a convicted person has served maximum term of his jail life on condition of maintaining good behaviour. He has consented to remain in the custody and guidance of the institution approved by the Government of the state until a final release from prison is ordered.

Parole is really a happy break with the **classical theory** of criminal Law. In Parole system a good attempt is made to adjust the social response to the circumstances of the offence and the characteristics of the offender. Parole includes guidence and assistance to the offender. This is also to implement the interventionist reaction to crime and criminolity. In Parole - Punitive reaction to crime is clearly present. Parole is granted by Parole Board. Therefore parolees are considered as "in custody" of prison authorities.

UNIT OBJECTIVES

To study about parole - its implications - Meaning- scope. We also study here about the parole laws, rules Provisions and supervision. To know about halfway Houses, Organisation etc.,

UNIT STRUCTURE

Introduction

Unit Objectives

(Space for Hints)

Unit structure

9.1. Parole - Meaning and Scope

a) Object of Parole.

9.2. Parole Techniques.

9.3. Principles of Parole.

9.4. Parole Laws.

9.5. Parole Procedure

9.6. Parole Supervision

9.7. Halfway houses.

9.8. Summary

9.9 Keywords

9.10. Answer to Check Your Progress.

9.11. Model Questions.

In this lesson we are going to see

a) Parole -Meaning and scope

b) Parole provisions, rules and supervision

c) Halfway houses, organisation and significance

9.1. PAROLE MEANING AND SCOPE

Parole is the status of being released from a penal institution in which a criminal has served a part of a maximum sentence on condition of maintaining good behaviour and remaining in the custody and under the guidance of the institution approved by the state until a final discharge is granted. The term Parole is used in analogous manner with reference to institutions for mentally disturbed and retarded persons.

Parole represents a break with the **"classical theory"** of the criminal law, since an attempt is made to adjust the social response to the circumstances of the offence and the characteristics of the offender. Also, Parole ideally includes guidance and assistance to the offender, just as probation ideally includes such guidance and assistance. Thus both systems attempt to implement the **"interventionist reaction"** to crime and criminality.

The punitive reaction to crime is more clearly present in Parole than in probation. Parole is granted by an Administrative Board, and it is always preceded by serving part of a sentence in a prison, while no formal penalty is imposed in probation. Probations are considered as receiving assistance while under the threat of punishment, should they violate the conditions of their probation, but probation is granted by courts as a substitute for punishment as well as for mere suspension of sentence. Parolees are considered as "in custody" and undergoing both punishment and assistance while under the threat of more severe punishment-return to the institutions from which they have been released. Without the threat of return to prison, release from prison before the maximum term was served would merely represent the workings of the **"indeterminate sentence"**, not parole. Since Parole is expected both to punish and to rehabilitate, the conflicts between punishment and intervention found in-prisons are also found in Parole.

Parole is a combination and extension of earlier practices, but the idea of giving guidance and assistance is relatively new.

The first trace of Parole was the system of **indenturing** prisoners. By this means prisoners were removed from institution and placed under the supervision of employers and could be returned to the institution if they did not behave properly.

Later. the supervision was centralised by appointment of state visiting agents with the special function of protecting the Juvenile wards of institutions against cruelty.

(Space for Hints)

Several other systems for handling prisoners were combined with the indenture system before a parole. system was formed for adults. One of these was **"after-care of discharge convicts"**.

American philanthropic societies attempted to help ex-prisoners and worked more energetically. The state also made efforts in the same direction. It appointed agents for discharged convicts and this agent used public funds to assist ex-prisoners to secure employment, tools, clothing and transportation to places of employment.

An agent for discharged convicts pointed out in his reports that his work could be greatly improved if the state retained custody over prisoners for sometime after their release, he suggested that good-time allowance should be used merely to determine the time of release from the institutions, but not from custody.

In the early nineteenth century the **English convict colonies in Austrilia develoed a primitive Parole system**. with little supervision and guidance after release, under the name **"Ticket of Leave"**.

The English Prevention of Crimes Act 1871 provided for survillance by the police for a period of seven years after release from prison of all except those on their "First Terms".

"Gillin" thinks that Parole is the release from a reformative institution of an offender who remains under the control of correctional authorities, in an attempt to find out whether he is fit to live in the "free society" without supervision.

9.1. a. The Object of Parole

The object of Parole evidently is to keep the prisoner in contact with society in general and his family in particular which would not otherwise be possible in case of long imprisonment. In particular, not possible otherwise, and an opportunity is also provided to the prisoner to make financial contribution to the family by his earnings outside the Jail. The major objectives of probation and Parole are rehabilitation of the offender and the protection of society from his acitons at the same time.

David Dressler describes four general techniques which are employed by the supervision agents as noted in his book Practice and Theory of Probation and Parole (1959). (Space for Hints)

9.2. PAROLE TECHNIQUES

1) Manipulative Techniques

By employing this technique modification is sought in the oftener's environment in terms of family relationship, employment and community life.

2) Executive Techiques

Here the Parole officer tries to help the offender by referring him to the appropriate organisation like public and private welfare agencies recreational programmes and employment services.

3) Guidance Techniques

The Parole officer may advice or even help the Parolee through psycholgical methods which do not require great professional training. The Parole is encouraged to be self-reliant and recognition is given to any good factor's in the clients personality.

4) Counselling Techniques

These techniques differ from the guidance techniques in the sense that these require training and. skill which are not possed by Parole officers. These techniques are needed to solve serious personality problems.

(b)Parole

(1) Provisions

(2) Rules

(3) Supervision

In Parole, part of the sentence is served and it is then that the convict is

(Space for Hints) released on Parole on condition of good behaviour and if he is found to have improved and has abstained from criminal conduct, he gets remission of the rest of the sentence and for sometimes at least a part of the sentence.

Parole is also known as a pre-mature release of offenders after a strict-security of long term prisoners, under the Rules laid down by the government. Premature release from prison is conditional subject to his behaving in society and accepting to live under the guidance and supervision of Parole officer.

"Parole" means "a term to designate conditional release granted in a penal institution" in the Encyclopaedia of the social sciences.

A set of Model Parole Rules have been framed sometime ago by the central advisory board on correctional services with a view to preserving a basic uniform approach in this country. [Journal of Social Defence 1972].

Parole is not a new technique. In England it is known as **"Ticket of Leave"**. It originated in a plan worked out by "captain **Alexander Maconochie"**. He is known as **"Father of Parole".**

9.3.PRINCIPLES OF PAROLE

Certain principles have emerged on the basis of past experience. These are

1. Careful Diagnosis of the prisoner.
2. Selection for parole of only those inmates the study of whom shows that they will probably do well on release.
3. Selection for Parole of only whose release will not outrage the sense of justice of the community from which they came.
4. Proper employment should generally be secured before a convict is paroled.
5. Placement on proper surroundings
6. The institution must prepare for parole.

Check Your Progress

1. Explain the Meaning of Parole.
2. Examine the Parole Provision
3. Explain ticket of Leave

7. Careful follow-up is absolute necessary. (Space for Hints)

8. Co-operation with private and public social agents.

9. Populous states should have a fulltime paid Parole Board, or if an unpaid Board, a full time staff.

10. This Board should be composed not of political appointees but of Men of intelligence and integrity having experience in such matter.

11. The responsibility of Parolees should rest upon this Board.

12. Parole success is connected with the extension of indeterminate sentence.

13. Parole officer must be numerous enough and sufficiently trained to give adequate supervision.

14. Discharge of parolees should be.entirely in the hand of the Parole Board.

9.4.PAROLE LAWS

The following may be considered for application in our parole system. These satutory provisions are recommended as standard laws for Parole. [Taken from-source Book on Probation Parole and Pardon by Charles. L. Newman 1972].

1) The law should empower the paroling authority to consider all provisions for parole, regardless of the nature of the offence committee, to establish the time when a .prisoner is eligible for parole, and to exercise full discretion in determining the time at which parole should be granted to any eligible person.

2) The law should empower paroling authority to establish rules of operation, to establish condition of parole, to revoke parole for the violation thereof, and to discharge a person from parole when it determines that supervision is no longer needed.

(Space for Hints) 3) The law should provide for the establishment of a parole agency which should have supervision of all persons paroled or discharged from a correctional institution by mandatory release.

4) The law should provide that proper notification be given to the paroling authority regarding violations of any of the conditions fixed by the authority.

5) The law should provide that discharge from parole has the effect of restoring all rights that may have been lost as a result of conviction and that the certificate of discharge should so state.

9.5. PAROLE PROCEDURE

1. The prisonier should be present at his hearing when the granting or revoking of parole is being considered.

2. A prisoner should not have to apply for parole.

3. Prisoners should not have to apply for parole be assisted by staff in developing parole plans. A staff member, sometimes called between the classification department of the prison and paroling authority.

4. Basic information regarding offender that should be available to the Parole Board at any hearing they should include.

   a) a report on the inmates prior history.

   b) a report on his adjustment in the institution

   c) a pre-parole investigation report from the community.

5. Every offender eligible for parole should be involved in programme for pre-release preparation.

6. Supervision of parolees should be carried out by full time paid staff. Supervision should not consist of entirely written report; house and community contracts should be made.

Mr Jimmy Carter, Former President of the United States, made certain observation in **"Law day"** (May first every year) speech to the **University of Georgia** while he was Governor of Georgia State, relating to Parole which bear quotation. (Space for Hints)

"Well, I do not know the theory of law, but there is one other part I want to make, just for your own consideration. I think we have made great piogress in the pardons and Parolles Board since I have been in office and since we have recognized the Government. We have five very enlightened people there now. And on interview the inmates, to decide whether or not they are worthy to be released after **"they serve one-third of their sentence"**. I think most jurors and most judges feel that when they give the sentence, they know that after a third of the sentence has gone by, they will be eligible for careful consideraticn. Just think for a moment, about your own son or your own father or your own daughter being inprison, having served seven years of a life time term and being considered for release. Don't you think that they ought to be examined and that the Pardons and Paroles Board ought to look at them in the eye and ask them a question and if they are turned down, ought to, give them some substantive reason why they are not released and what they can do to correct their defects". The above paragraph was quoted by Mr. Justice Krishna Iyer in Md. Glasuddin -Vs- State of A.P. AIR 1977 S.C. 1926.

9.6. PAROLE SUPERVISION

Parole may be granted without supervision however, it is increasingly being accepted that supervision of Parolee is a sine qua non. Conditional release without supervision should not be known as parole. The cruk of successful parole is supervision. Without intelligent. trained supervisors the entire system breaks down. All prisoners should be released with some restrians if parole treatment is to mean anything, so it is important to have enough supervisors who understand the responsibility of supervision. Supervision does not mean espionage: the parole officer must not be a policeman. He should be a friend in need, an advisor who throughly understand the individual's peculiar problems arising there from his term in prison.

(Space for Hints)

Regardless of the sympathy and guidance elicited by the parole officer his success depends largely his own initiative and ability. A hostile community, a suspicious; neighbourhood, an almost strange family and an even more strange group of erst while friends and acquaintances -all must be convinced that he is going straight. The successful parolee deserves credit, for he has a superhuman task.

9.7. HALFWAY HOUSES : ORGANISATION AND SIGNIFICANCE

England had long maintained hostels for youthful probationers, who may be sentenced to reside in them for a period of up to a year while working or atteding schoo1. This is evident from Lan Sinclair on "Hostels for probationers" Home office Research Unit Report No.6 (London Her Majesty's Stationary office 1971).

These Hostels were called "Halfway Houses" in the sense that they were inter mediate between closed institutions and the community.

When a student gets 60 (Sixty) percent of marks out of 100 the teacher used to encourage him by saying, you are a good student, you are an intelligent student try you can get 70 percent of marks. You can do better and so on. The teacher influences in the mind of the student that he is a better student so he can get more marks. This is a Psychological approach. It is like patting on the shoulders for his good deeds. So the student next time does better in the examination and scores 70 percent of marks. This is a kind of encouragement to the student.

So also, this is a kind of encouragement to the offender to learn good behaviour. All along you were behaving properly; Therefore you have been placed in the Hostel. Now if you behave for some more time with good appreciable manner you will be sent home. You have jumped "HalfWay"

Check Your Progress

4. Analyse the Principles of Parole.
5. What do you mean by Half way Houses.?

Similarly, England had long maintained "day-care" centres and group homes for some Juvenile probationers. In the United states in the last decade, similar programs have been introduced as "community corrections" and "diversion" and probation workers have been increasingly become involved in them.

"Community correction" and "diversion" had never been precisely defined but each refers to systems for keeping delinquents and criminals out of traditional institutions and usually something more than straight probation is implied. These community corrections and diversion are ideally "intensive intervention in lieu of institutionalisation. They are specialised units of parole agencies counseling centers and residential centers and out- of home placement.

In England, convicted offenders are sentenced to work alongside volunteers, sometimes as a condition of probation, sometimes as a sentence in its own right. Similar programs were introduced in the United States as "Community Treatment" or "diversion".

Walter. D. Connor has shown in "Deviance in Soviet Society" in a study of the Soviet Union, that such forced public participation programs have idealogical as well as economic implication "Part of the significance of public participation may lie in its relation to the attempt to form and solidify attitudes the regime wishes to create: to build soviet style: a "Collective conscience".

In the United States, Adults are handled in "prison plus" or "Parole Plus" programs selected inmates are partially released on furlough to "Halfway Houses", and other programs.

The individual as well as the society are benefited by these supervised integrated programs.

9.8. SUMMARY

In this lesson we have studied about parole and its implications in the individual and in the society. We have also seen, what are the uses of parole. The term Parole is used in analogous manner with reference to institutions for mentally disturbed and retarded person. We have studies David Dresslers - Four General techniques which used in supervision in Parole cases. In India it is called "Ticket of Leave". Captain Alexander maconochie" is known as "Father of Parole".

(Space for Hints)

We have also come to know about "Principles of Parole" and about Parole laws in Foreign countries. By studying comparatively we are trying to bring it into India. We have studied about "Plea Bargaining" which is followed in U.S.A and we have brought it into India concept. We have slowly adapted the Brazilian principle of "Parttime" Prison in India. We have thus have "open air Prison". We have introduced "Open air campes by Dr. Sampoornand. in Tamil Nadu - Sivaganga.

9.9. KEYWORDS

1. Parole	-	"a term to designate conditional release granted in a penal institution" (Encylo pacdia of the social sciences).
2. Ticket of Leave	-	Leave granted to an inmate in jail for some days. Which he has to undergo again.
3. Counselling Techniques	-	Needed to solve serious personality problems.
4. Parole Board	-	An oridependent administrative body - to look after the in mates of prison and to study about the release - with condition.

9.10. ANSWERS TO CHECK YOUR PROGRESS

For Question No. 1. Refer Para. 9.1

For Question No. 2. Refer Para. 9.2

For Question No. 3. Refer Para. 9.2

For Question No. 4. Refer Para. 9.3

For Question No. 5. Refer Para. 9.7

(Space for Hints)

9.11. MODEL QUESTIONS

1. Examine the concept of Parole, Meaning and scope

2. Explain the "Parole Provisions"

3. Examine Mr. Jimmy Carter's (former president of U.S.A) view on Parole.

PART -V

LESSON -10

PAROLE AND AFTER CARE

INTRODUCTION

In this lesson we are going to study. He role of Voluntary agencies in Prevention of crime - Institutional and Non-Institutional treatment of offenders and after care. We will also be studying the Rehabilitation - of the released offenders. In the Olden days the Punishment to the offenders were very harsh. People thought that it will deter the normal person from committing crimes. But it has not reduced the crime. Can we change the criminal with out changing the society in which he lives. Can we change the societies attitutde towards the offenders.? Can we change the attitude of the offenders towards the individual and the society, it is only a trial and error method in the reformation and rehabilitation of the offender.If two persons are suffering from the some disease - if a medicine is given to the persons - one person may get cured off and another person may not be cured. One mans food is another man's poison. Hence we use many techniques in reforming and rehabilitating the offenders.

UNIT OBJECTIVE

The Objective is to know about the techniques employed by the great social scientists in the reformation of the offenders. The Great Philosophers like Jeremy Benthem, Enrico Ferri- had contributed their ideas to us. We will study them and employ them in the refermation of the offenders.

(Space for Hints)

UNIT STRUCTURE

Introduction

Unit Objectives

Unit Structure

10.1. Changeing criminals

10.2. Prevention better than cure.

10.3. General Programme.

10.4. Role of Voluntary Agency

10.5. After - care

10.6. Institutional Modification

10.7. Institutional Re-Organisation.

10.8. Human Rights Violations.

10.9. New Areas - Punjab Cremation case.

10.10. Supreme Court and custodial violence

1. Use of Hand Cuffs - When

2. Third Deqree Methods

10.11. Victim's Rights

10.12. Prisoner's Right.

10.13. Laws Giving Special Rights to Women

10.14. Laws Relating to the Child

10.15. Summary

(Space for Hints)

10.16. Keywords

10.17. Answer to check your Progress.

10.18. Model Questions

In this lesson we have to see

The Role of Voluntary agencies in Prevention of crime : Institutional and Non-Institutional treatment of offenders and after care.

and

After care and Rehabilitation, Need Importance and Services in India - Human Rights Violations - Supreme Court and Custodial Violence - Victims Rights - Prisoner's Right - Laws Giving Special Rights to Women - Laws Relating to the child.

10.1.CHANGING CRIMINALS

The methods of changing criminals have not been notably successful in reducirlg the crime rates. The methods have failed most frequently in changing offenders who have been reared in the situations where crime flourishes most. The methods have been least effective in dealing with the offenders who come from the most potent crime-breeding situations.

The policy of prevention must be emphaised if the crime rate is to be reduced significantly. Punishment and procedures for changing criminal are, at best, methods of coping with the products of crime-generating social system. It is futile to take individual after individual out of the situation that produce criminals and permit the situation that produce criminals and permit the situation to remain as they were. A crime is more than physiological act of an individual. It involves a whole network of social relations. If we deal with this set of social relations we shall be working to prevent crime.

10.2. PREVENTION IS BETTER THAN CURE

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The superiority of prevention to reformation and to correciton by non-punitive methods may be illustrated in the problem of school discipline.

Two generations ago corporal punishment was used with great frequency in the schools and disorder was generally prevalent in spite of the punishment. Orderly behaviour the developed but it did not develop by increasing the severity and frequency of punishment The improvement in the behaviour of school children came as the result of improvement in the teachers and the curricula and in the gradual development of a tradition of the orderly behaviour together with liberality in the criteria of good behaviour. The school system was adjusted to the need of the students much better than it had been previously. It is probable that analogous changes must be made in the social organisation before great reductions can be made in crime rates.

Most criminals in their earlier stages are probably much like the person who is dishonest in reporting personal property to the tax assessor. This person would be willing to make an honest report if others made honest reports. Individuals are driven to dishonesty because dishonest is prevalent. The prevalence of dishonesty needs to be modified so that individuai crime is prevented says Joseph. W.Rogers in "Why are you not a criminal?"

No one car show in advance that crime will be significantly reduced if a particular program of prevention is adopted. The Differential Association Theory is a step in this direction. .

10.3. GENERAL PROGRAMME

Many general programs of crime prevention have been out lined. For example **"Jeremy Bentham"** in the last part of the eighteenth century made a compreheive outline of the **"indirect methods"** [Methods other than punishment] that might be used to prevent crime. He included both social defence items and interventionist items such as taking away the capacity to injure, diverting the course of dangerous desires, decreasing susceptibility to temptation, general education and a code of morals similar to a code of laws.

(Space for Hints)

"Enrico Ferri", a leader of the Italian school paid considerable attention to the prevention of crime. He had a doctrine of **"criminal saturation"** namely that a group has the crimes it deserves in view of the type of people and the condition's of the group, and that as long as the type of people and the conditrons remain constant, crime will remain constant regardless of methods of punishment.

Enrico Ferri insisted that methods of modifying the conditions and traits of people should be used. He outlined a long list of these including **"free trade"**, reduction in **"hours of Labour"** lower interest on public securities and so many.

10.4. ROLE OF VOLUNTARY AGENCY

Voluntary Agency can help the central and state Government in their operations with community based approach.

Voluntary agency can workout remedies and solutions depending on local needs. Voluntary agenctes have a functional responsibility for providing human security.

Institutional and Non-Institutional Treatment of Offenders

Resolution No. 16 of the 7th United Nations Conference on the Prevention of Crime and Treatment of Offenders says that imprisonment should be imposed only as a **"last resort"**.

Non-institutional treatment methods are widely used in many countries. They are mostly **"community-based corrections"**. They will be less costly. Community based program should ensure that they respond not only to the needs of the offenders but also the interest of the community.

Check Your Progress

1. How Prevention is better than cure?
2. Examine the contribution of Jeremy Bentham
3. Write a note on "Enrico Ferry."

10.5. AFTER CARE :-

Rehabilitation Need -importance and services in India

After care has been conceived as an approach designed to reduce the offender's social isolation. After care will hetp the offender to get over his social handicaps. It will help to remove his stigma in his present life and future life.

After care programmes are necessay steps in the complete, rehabilitation of the individual offender. After care is not a kind of benėvolent activity intended to rescue a fallen individual offender. Aftercare is based upon the needs of the offender who is going out of a correctional institution to this wonderful world.

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After care programmes must restore his self-confidence and rehabilitate the Offender by sending him back to the community to become a useful citizen.

The All India Jail Manual Committee 1957 points out "Aftercare is the released prisoners convalescene. It is the process which carries him from artificial and restrictive environment of institutional custody to satisfactory citizenship, re-settlement and ultimate rehabilitation in the free community".

The offenders in the after-care programme wants love and affections. When we were doing M.A. in Criminology and Forensic Science in the year 1971 we went to a place near Pallavaram at Madras, where After-care programme was camped. The inmates cooked vegetable food items. Spinach or Green leaves was one among the item. They have named a Green leaves as" I.G. Green leaves". The seeds were given by the then I.G. Inspector General of Police F. V. Arul. They have planted it and harvested it. They were eating it. This is one instance. There may be more instances to show that the offenders wanted "love and affection".

The Indian Jail Conference in the year 1877 for the first time discussed the question of helping the Ex-convicts. In 1894 a **Discharged Prisoners Aid Society** came as a non- official society in Utter pratesh. Under the chairmanship of Professor M.S. Gore, and Advisory committee on After-care program was appointed by the Central Social Welfare Board in 1954. This advisory committee recommended infrastructure and programs. A comprehensive after-care program was started in the second and third five-year plans. The Government of India constituted a working Group during 1972-73.

All India committee on Jail Reforms (1980-83] emphasised the importance of after care homes for the released prisoners. Seventh Five year plan also presented a well-rounded scheme for the welfare of the prisoners for their

(Space for Hints) After-care. The all **India committee on Jail Reforms 1983** recommended After-care programs for the discharged prisoners. The committee also thought Department of Prisons and Correcitonal Services must be given power to deal with these programs.

Planning for after-care should begin as soon as an offender is admitted in the prison. Voluntary orgainsation engaged in after-care must be given necessary training encouragement, guidance and incentives.

The recommendations made by the Advisory committee on After care in 1955 have not been properly implemented- The model prison manual, the Mullah committee on prison reforms had well in advance recommended for after care service. The Juvenile Justice Act 1986 also had a clear vision for after-care institutions for Juvenile offenders.

10.6.INSTLTUTIONAL MODIFICATION

The "Structural Frustration theory" developed by Robert Merton is widely considered to be a theory of delinquency and crime as well as a theory about the origin of deviant subcultures. The basic notion, is that when a cultural system extols common success goals for all but restricts or blocks access to means of achieving these goals, delinquency and crime appear among those persons whose access to legitimate means for achieving success has been frustrated. It follows that much of a nations delinquency and crime would be prevented if the economic institution were modified in such way that opportunities for achieving success by legitimate means become equal.

10.7.INSTITUTIONAL RE -ORGANISAITON

Many persons have advocated widespread reorgainsation of the general institutional structure. Many criminologists have suggested that only partial and temporary reduction in crime rates can be expected from the programs currently exployed in the attempt to prevent crime and delinquency: Repression, clinical treatment, special school classes for "Pre-delinquents" character education **"education of parents"**, case work and group- work with parents and children, domestic-relations, courts foster homes, club and camp programs, neighbourhood and school modifications and others.

All of these, are based on a theory that attributes delinquency and crime to some kind of defect in an accepted social system; the prevention programs consistently try to correct these defects without disturbing the "status quo".

(Space for Hints)

In the Soviet Union, too, delinquency and crime are attributed to defects in socialisation processes and social-control mechanisms and prevention consists of trying to improve those mechanisms rather than changing, political and social order.

Donald, R. Taft, an Amercian sociologist, who did extensive research on crime among immigrants and culture **"conflict during"** the first half of 20th century, argued persuasively that none of the remedical crime -prevention programs cuts the deeper roots of crime.

Saul Alinsky, a chicago sociologist also is of the opinion that crime will be prevented only when basic social injustices are eradicated.

PRESENT POSITION

10.8. HUMAN RIGHTS VIOLATIONS :

High Court Suggested to centre

The Madras High Court has suggested to the Union Government to bring necessary amendments to the Indian Penal Code, Indian Evidence Act and Protection of Human Rights Act, to provide succour and relief to victims of human rights violations.

A Division Bench comprising Mr. Justice M.S. Janarthanam Mr. Justice M. Karpagavinayagam in its 223-page Judgement outlined the need for vesting the human rights courts (HRCs) with more powers, which the Bench said could be done only if deficiencies in the IPC, IEA and PHRC were rectified.

The Bench was of the view that a new offence, 'torture', which affected the dignity of the individual be incorporated in the IPC. The Bench pointed out that the Law Commission in its 113th report, while dealing with custodial deaths had said that if there was evidence that the injury was caused during the period

(Space for Hints) when the person was in custody, the court could presume that the injury was caused by the police officer having the custody of the person. A new provision Sec. 144-A be introduced in the IEA revising the burden of proof regarding human rights offences as suggested by the Law Commission.

The judges made it clear that the HRCs should have the power of exclusive jurisdiction to award compensation to the victims of human rights offences without any limit and the jurisdiction of civil courts should be ousted. By making a suitable amendment in PHRA, the HRCs should be empowered to recover the whole or part of it from the officer(s) who were found guilty and to award interim compensation. Till the amendments were introduced, the HRCs could grant compension under Sec. 357 Cr. P.C. The Bench hoped that the amendments would be introduced vefy soon for giving succour and relief in a better way to the citizens, whose human rights were being violated day-in and day-out.

The Bench held that human rights could not mean anything other than the rights to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in this country. The violation of these rights at the instance of the instrumentalities of the State would come under the Jurisdiction of the courts.

The Judges suggested to the State Government to appoint within two months Special Public Prosecutors for the HRCs to handle human rights offences. The Bench said the procedure prescribed for the trial of various categories of offences under the Cr. P.C. would be applicable for trial of human rights offences before the Sessions Courts, designated as special HRCs. The Bench said it was not possible to fix a time limit for completion of the trial of human rights offences. The HRCs should exhibit more sensitivity and adopt realistic, rather than narrow and technical approach in the disposal of such cases.

The Bench said all complaints of human rights violation could be lodged before the prin Human Rights Commission either by the victim or by any person on behalf of the victim and the Commission would be competent to inquire the same. The Commission would have the only power to recommend award of

compensation including interim relief, besides initiating criminal proceedings against the official(s) concerned.

(Space for Hints)

Endorsing the view expressed by Dr. S. Subramanian, a bureaucrat, the Judges said human rights teaching should be made part of pre/post induction training programmes at al leaveis of bureaucracy. Human rights as a subject of study be included in the curricula and syllabi of schools, colleges and universities.

Initially the Tamil Nadu Pazhankudi Makkal Sangam filed a petition before the CJM, Erode (designated HRC) complaining of harassment and torture of its members at the hands of the STF constituted to nab the sandalwood smuggler, Veerappan. The CJM rejected the complaint. Later on the letter from Mr. V.R. Krishna Iyar, retired Supreme. Court Judge, the Bench took the revisiqn petition on file and heard the views of National Human Rights Commission. PUCL, State and Central Government, NGOs and representatives of the various Bar Associations, before evolving a procedure and framing the rules and regulations governing human rights violations. The Bench held that the CJM, Erode, was correct in returning the complaint.

(The Hindu-June 30 1997)

10.9. "NEW AREAS" NHRC ALL SET TO ENTER (PUNJAB CREMATION CASE)

For the international human rights community, the setting up of a 'National Human Rights Commission in India has blunted the" edge of raging criticism about rights violations in India. For human rights activist in India, after the initial misgivings about its indepdendence and efficacy, there is now a guarded readiness to work with the NHRC. But for the NHRC the **"Punjab cremations case"** provides an opportunity to push the boundaries of human rights jurisprudence in India.

Three years after the NHRC was set up, the cremations case poses a challenge to the Human Rights Tribunal, to "enter in new areas; as NHRC chair-

(Space for Hints)

person M.N. Venkatchaliah indicated, in evolving from human rights perspective procedures and principles of compensation in matters of public law.

Justice Venkatachalian explained that in adjudicating on compensation in the case of mass cremation by the Punjab police of thousands of bodies declared un-identified, the Commission has to consider what remedies are available in public law, punitive or exemplary. "Compensation for a fatal accident in a private law situation is quite, different," he said.

The Supreme Court had, on December 12, referred to the NHRC the Punjab cremations case, to determine "all issues" arising from the mass cremation of bodies said to be unidentified "Iawaris" by the police. According to five reports submitted by the CBI to the court last year, of the 2,097 bodies cremated as unidentified 586 were identified and 274 could be partially identified. While the CBI was asked to continue with the process of registering the cases, the Supreme Court left it to the NHRC to determine the "remaining issues".

The CBI's reports have not been made public. However, the counsel for the CBI indicated at the preliminary hearing on January 2 that the CBI has concentrated on the fact of the cremations but had not investigated the circumstances.

At the preliminary hearing, the counsel for the human rights groups argued that in determining the "remaining issues", A Human Rights Tribunal should go into the circumstances of how between 1992 and 1994 thousands of bodies were cremated by the police as "Iawaris"'unidentified. It is one thing to see that fact of cremation by the police as an illegal act quite another to see in it a pattern of "horrendous" human rights violations.

"Moreover, in .investigating the culpability of the agents of the state on such a vast scale, questions arise about the manner in which the state, system may itself have become an accomplice. Eventually how wide the NHRC interprets the "Jurisdiction, scope and ambit" of the Supreme Court; mandate to it, will be decided on February 18 at the next hearing. But Justice Venkatachaliah made it quite clear that the NHRC is not a motor accidents claim tribunal.

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As Nitya Ramakrishan, advocate for the Committee for information and initiative in Punjab, noted "the Supreme Court could have itself ordered the compensation. The purpose of the Supreme Court in referring it to the NHRC a body specifically set up to protect fundamental human rights, is that NHRC can go into circumstances of how it happened and see that it doesn't happen again".

In the last three years, the NHRC has not hesitated to go into the systematic implications of custodial violence. The NHRC annual report (1995-96) states that when it comes to custodial violence, it is not enough to prompty press for justice. "The protection of human rights required an altogether different perspective and approach which had to be proactive. Custodial violence had to be prevented before it occurred.

In the cremations case, the NHRC is confronted by a battery of sheer numbers. Here instead of applying principle to a particular case, the NHRC is faced with the challenge of evolving procedures and principles for a category of cases.

The report of mass cremations had come to light through the investigations of the general secretary of the human rights wing of the Akali Dal and the Committee for information and initiative in Punjab, On the basis of the firewood register of the Patti municipality, Amritsar district (Tam Taran Police Station) it was found that 1992, 534 bundles of firewood had been requistitioned to cremate unidentified bodies, Using the "Lawaris" register of Durgiana Mandire (Amritsar City), it was estimated that in 1992, 300 Bodies were cremated. Khalada "Disappeared" after allegedly being seen with members of the Punjab police on Septermber 6, 1995.

Rita Manchanda

"Hindustan Times" 1997

HUMAN RIGHTS

NHRC asks Bihar Government to ensure "proper treatment of prisoner"

The National Human Rights Commission has expressed its serious dis-

(Space for Hints) pleasure at the casual manner in which the "jail authorities in Bihar" has handled treatment of a prisoner lodged in "Central Jail in Patna".

Receiving a complaint from one **Mr. Rabindra Prasad Singh**, a life convict lodged in **"Beour Central Jail, Patna"**, alleging that despite a serious problem with his hearing, he was not being allowed to visit Medical college Hospital (PMCH) for treatment. The Commission had passed a direction in September last saying that the prisoner's ears should be examined by an expert available in the PMCH within three weeks of the date of notice and that the Superintendent of Jail should report compliance.

The Commission had also sought a report from the State Chief Secretary and the Inspector-General (Prisons) as to how exactly the prison authorties intended to ensure the treatment of the prisoner in the future, assuming that he still needed such treatment.

Commission reccommends Rs. 1.00 lakh towards compensation in a custodial death case

The Commission has recommended an interim compensation of one lakh rupees to the heirs of an undertrial died in judicial custody apparently due to custodial violence in Agra district jail. The Commission has also recommended that the UP Government-shall get the matter fully investigated by the State and prosecute all persons found responsible for this unfortunate loss of life as well as those reponsible for the cover up.

The Commission's recommendations came in the wake of a complaint from one **"Mr. Ajit Kumar Chaturvedi"**, Agra in Uttar Pradesh dated 11 July 1995, alleging that his brother, Ajit Kumar Chaturvedi an undertrial prisoner in District Jail, Agra died as a result of injuries inflicted while in jail custody.

Book on Human Rights presented to the Commission

United States Ambassador to India, **"Mr. Frank G. Wisner"** presented a set of 56 books and catalogues, about or related to the subject of human rights, to the National Human Rights Commission at a function held in the Commission's headquarters in New Delhi on 6 May 1997.

(Space for Hints)

Speaking on the occasion Mr. Wisner complemented the efforts being made by the Commission in protecting the rights of the citizens of the country. **"No institution reflects India's commitment to democracy and protecting human rights better than the Human Rights Commission"** he said. He said India had broken new grounds in handling the challenges faced by the country while dealing with issues like **"child labour, custodial deaths, womens' rights and prison reforms"**.

Commission reserves the orders in the case of alleged mass cremation of unidentified dead bodies in Punjab

Having heard the learned Counsel for all the parties on the preliminary questions noticed and formulated in the course of the Commission's order dated 28 January 1997 as also those arising out of the objections filed by the respondents, the Commission, on 12 May 1997, reserved its orders in the case of alleged mass cremation of unidentified dead bodies in Punjab.

In a Public Relations counter opened at the Commission's headquarters An inquiry and Public Relations counter has been opened at the Commission's headquarters at Sardar Patel Bhavan with effect from Monday, 21 April 1997. The counter will respond to and assist complainants seeking information/clarification about the status of their complaints.

The counter set up at the entrance of Sardar Patel Bhavan, will be operational between 4 and 5 P.M. and longer if ncecessary, every day. The counter will respond to grievances of the complainants and give information about the proceedings/investigation of their complaints, the officer-in-charge will also arrange a meeting for the complainants with higher officers or with Members of the Chairperson, if the matter is sufficiently serious.

Tamil Nadu constitutes, "State Human Rights Commission"

The Government of Tamil Nadu had set up the State Human Rights Commission with Mr. Justice Nainar Sundaram as Chairperson and Mr. Justice K. Swamidurai, Mr.Abdul Ghani, Mr. R. Rathinasamy and Dr. M. Susheela Raj as Members. These appointments were made by the Governor of Tamil Nadu in

(Space for Hints) exercise of the powers conferred by sub-section (1) of section 22 of the protection of Human Rights Act, 1993. With this, Tamil Nadu has become the 5th State constitute a State Human Rights Commission, after West Bengal, Himachal Pradesh, Madhya Pradesh and Assam. Recently Punjab and Jammu & Kashmir had also announced the setting up of State Human Rights Commissions.

New Chief for UNHRC

"Ms. Mary Robinson, President of Ireland", has been chosen as the new United Nations High Commissioner for Human Rights. Her appointment was announced by the UN Secretary General Mr. Kofi Annan at the UN headquarters in New York. Ms. Robinson succeeds Mr. Jose Ayala Lasso, who resigned in last March to take over as the Foreign Minister of Ecuador.

(Source: Human Rights Newsletter; June 1997.)

Eliminate terrorism without jeopardizing Human Rights: Commissioner's call at Geneva meet of UNHRC

The National Human Rights Commission has urged the world community to evolve new ways and means to counter and eliminate terrorism without jeopardizing principles of human rights. Participating in the 53rd Session of the UN Commission on Human Rights (UNHRC) at Geneva, Mr. Virenda Dayal, Member of the Commission, said that the protection of human rights in areas affected by terrorism and insurgency posed special problems for those who were detained to uphold and ensure respect for such rights. It was gratifying that UN was giving inceasing thought to this question, he said.

Elaborating on the issue, Mr. Dayal said that India has been interested to see the resolutions adopted by the General Assembly on "Measures to Eliminate International Terrorism" and "Human Riahts and Terrorism". "For our part, we have consistently taken a view in harmony with these resolutions", he said, adding "in our dealings with the armed forces, we have been at great pains to impress upon them that, while it is their duty to the nation to triumph over terrorism, they must do so with full respect for the laws of the land and the rights of all of the people who inhabit it".

Punjab Government pays compensation to the widow of police firing victim following Commission's recommendations.

(Space for Hints)

Compensation amounting to one lakh rupees, as recommended by the Commision, has been disbursed to Mrs. Harkeerat Kaur, widow of a victim in a police firing by the Punjab police in January 1993. A further sum of Rs. 72,000/- towards subsistence allowance for the period from February 1993 to January 1997@Rs. 1500/- per month has also been paid to her in February 1997. The accused police constable, against whom the commission has recommended initiation of the criminal proceedings, was lodged in jail and was being tried by the Sessions Judge, Firozpur.

The information was made available to the commission on an enquiry through it, Investigation Division.

Commission's official attends seminar on Police Reforms

The need for freeing Indian Police from political interference was emphasised by Mr. Sankar Sen, Director General (Investigation) of the Commission at a seminar held in Bombay on 21 April 1997.

Referring to the Commission's repport to the writ petition, demanding the implementation of National Police Commission (NPC) report presently under the consideration of the Supreme Court, Mr. Sen stressed upon the NPC's view point that police's autonomy should be accompained by a high degree of police accountability. Without proper accountability, there was a danger of creating a **"Frankenstein monster"**, he said, pointing out that out of the complaints received by the NHRC, more than 50 percent related to cases of police excess.

PM convenes high-leyel meeting on India's accession to UN Convention Against Torture

In a comprehensive paper presented at a meeting by the Chairperson of the National Human Rights Commission, Mr. Justice M.N. Venkatachaliah urged

(Space for Hints) that Indian accede to the 1984 Convention and signal to the country and to the world its commitment against brutality in custody on three accounts. First, the constitution, the laws and the rulings of the apex court of the country have already set standards of conduct and accountability that are no less demanding than those that might stem from treaty obligations, Second, India is bound to honour its obligations under the international covenant of civil and political Rights, to which she became a party on 10 April 1979. Under Article 7 of that covenant, torture is categorically forbidden and the provisions of that Article are non-derogable. Third, that Right against torture has been judically recognised by the Apex Court as a Fundamental Right, placing that right and the corresponding obligation it places on the State and its agencies as a fundamental entreched right.

Commission recommends to States A model Autopsy Form and procedures for Inquests

Taking into consideration the "importance of post mortem reports." as the single most important independent source of evidence in cases of custodial death, on which the fate of a case depends, the Commission has recommended to all the States, a Model Autopsy form and appropriate procedures for conducting the inquests.

In a letter addressed to all Chief Ministers recently, Mr Jusice Venkatachaliah said that the autopsy report forms used in various states were not comprehensive and therefore did not serve the purpose for which they were meant; they therefore gave scope for doubt and manipulation. The Commisssion had, accordingly, prepared a more incisive and purposeful Model Autopsy Form for use by the police throughout the country.

NHRC notice to Andhra Government

The National Human Rights Commission has issued show-cause notice on 12.10.97 to the Andhra Pradesh government on a complaint which drew the commission's attention to the plight of lacks of people evicted from their houses in the State. The Commission has also asked the president of the People's Unten for Civil Liberties, Mr. KG.Kannabiran, to conduct an on-the-spot inspection

and submit. report as soon as possible. The Chief Secretary of the Andhra Pradesh government has been asked to file the reply within three weeks. (Space for Hints)

The complainant, an Andhra Pradesh-based economist, Dr.P.Pullarao, had sought the commission's intervention to put a hold on the evictions. "In our country, poverty being a pervasive factor, anything that causes economic deprivation implies an affront to human dignity," Dr.Pullarao said in his complaint. The government, he said, had destroyed the homes of lakhs of people all round the State, specially in the West Godavari district, in the name of widening of roads. "This forcible evictions have been going on for the past one month," the letter said. .

There should be no objection to the eviction of people, provided some alternate house sites and housing was made available, In this case, however, lakhs of people were evicted without any alternate sites, forcing those turned homeless by the state, to live on roads, the letter said.

Defence minister flays NHRC's working

The defence minister, Mulayam Singh Yadav, came down heavily on the National Human Rights Commission for their lackadaisical attitude regarding the Kashmir Issue. He said that he has talked to the senior officials of the Indian army and reached the conclusion that it would be impossible to protect Jammu and Kashmir and save the country, if the commission continued to criticise the Indian force on this issue unnecessarily.

The minister was speaking in Allahabad on 7.10.97 in a workshop on 'human rights advocacy with special reference to **women, children and environment.'** The workshop was organised by the Bar Council of India Trust. He reminded the judges, lawyers and the members of the Human Rights Commission, who were present in the meeting, that it was Pakistani army which attacked Kargil area and killed innocent people. He further said that the intellectuals and the educated people are generally reponsible for creating confusion in the society. The poor and the illiterate people understand the easy way and they express themselves clearly. But they have not heard anything about human rights.

(Space for Hints) He also criticised the police system and said that there was not a single police station in the country where the violation of human rights was not a regular phenomenon.

Mr. Mulayam Singa Yadav claimed that he was among those few politicians who respected the court and felt that the violation of human rights was in fact the failure of democratic set up. The Chairman of the Human Rights Commission, Justice M.N.Venkatachaliah, said, while addressing the meeting as chief guest, that we have a westernized concept of human rights, a concept which does not suit us. He opined that the greatest human rights violation was to let a man live in poverty. This was the biggest problem of the country.

NHRC asks Maharashtra Government For CBI Probe Into Murder by cops

The National Human Rights Commission (NHRC) has asked the Maharashtra government to order a CBI probe-into an alleged murder by the state police personnel and recommended Two Lakh rupees compensation to the next kin of the victim. The Commission made these recommendations on a complaint of one Hamida Begum, a resident of Nagpur, ailleging that her husband was murdered by some police personnel and a state CID probe earlier had resulted in cover-up, NHRC sources told UN on 22.10.97

After investigating the complaint the commission also asked the state government to pay a compensation of Rs. Two lakh to the next kin of victim Usman Ansari and observed that the amount so paid may subsequently recovered from those police personnel investigation, the sources said. In her complaint, Ms. Begum alleged that her husband Usman was forcibly taken from their house on November 17 1993 by four police constables to prepare food for a party organized to celebrate the promotion of a head constable to sub-inspector. But the next morning his body was found on a road near the place of the party, the souces said.

(Legal News and Views, December 1997)

NGOs call for upgrading human rights commission (Space for Hints)

The National Human Rights **Commission** (NHRC) of India suffers from several lacunae, which need to be immediately addressed to make the body truly independent and effective, an international conference of Non-Governmental organizations (NGOs) said, in the capital recently.

"The Government of India is treating the Indian armed forces as holy cows by keeping them out of the purview of the National Rights Commission (under Section 19 of the Human Rights Protection Act, 1993). Moreover, the necessity before visiting jails or detention centres is humiliating to the NHRC, which is headed by a former Chief Justice of India," said Ravi Nair of the South Asia Human Rights Documentation Centre.

(Legal News & Views. November 97)

Threat to Human Rights Information Bill

Under a recently passed bill in Goa on right to information a government official will have 30 days to respond to any information called for under the Right to Information Bill. There is also a provision that it will be given by the **'competent authority'**. Bt the bill does not make it clear as to who that 'competent authority'. The most dangerous aspect is, **clause 14** of the bill, which reads, "No suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith or intended to be done in pursuance of this Act or the rules made thereunder". Such impunities are mockery of the very objectives for which the right to information is sought in a civil society. A number of Goan NGOs have decided to launch a stir against these objectionable features.

The original Bill had envisaged to impose fine on government officials who fall to furnish information within a time frame (Rs. 5000). This has now been dropped. Instead, the Bill says that a person getting information under this law and publishing it" in any manner, which has reason to believe is false would face penalties of not less than Rs.10,000/". Journalists and editors on Goa have expressed their concern over the misuse of this clause. The Goan bill is reminis-

(Space for Hints) cent of the Bihar Press Bill which was introduced some years ago and how it was opposed by NGOs.

Delhi Police Commissioner Supports Third Degree

A Section of the press reported on September 15, that while speaking on "Torture and Human Rights, Rights, Relevance to Medical Profession" organised by the Indian Medical Profession Association in Delhi, DCP, Crime said that there was no alternative to methods to torture for extracting information from criminals. He said that without ressure **even juice from a lemon can't be extracted leave aside the criminals.** He is reported to have said that a prime suspect in a recent kidnapping case in Delhi did not part with any information even after an interrogation for 8 hours. But within two minutes of beating the suspect confessed his involvement. Not only this, the officer concerned went on to disclose that on his personal request to the authorities no medical examination was conducted. The General Secretary wrote a letter to the National Human Rights Commission on September 17, 1997, bringing this news report to the notice of the commission. He wrote, "International obligations of Government of Inida against torture, constitutional obligations about the Rule of Law, and directions of the National Human Rights Commission for upholding the rights of the detenues can be blown to pieces at the whim of a police officer. If this can happen in Delhi, should not one think of the situation in smaller town".

Rights panel for more power

The West Bengal Human Rights Commission (WBHRC) may ask for more power to monitor the implementation of its recommendation. The chairman of the WBHRC, justice Chittatosh Mookerjee, said that this was needed to "Make the human rights commissions more meaningful and effective". Justice Mookerjee said that for providing more teeth to the HRCs there should be legislative changes. He hinted that a discussion at a higher level might already be underway in this regard. Though he declined to comment on the human rights situation in the State, he did say that cases of custodial deaths have gone up if compared with the figure of 1995-96.

Releasing the annual report of the commission for the year 1996-97 in Calcutta on 28th October '97 Justice Mookerjee said: "There is a marked improvement in the awareness regarding the existence of the commission". Elaborating, he said during the rear 1995-96, the WBHRC received only 524 cases of WBHRC" was getting all the cooperation from the State Government" Justice Mookerjee told reporters that the Government had "agreed to all our recommendations barring one". (Space for Hints)

Custodial death : NHRC awards Rs. 5 lakhs solatium

The National Human Rights commission (NHRC) has passed severe strictures against the Uttar Pradesh police for the custodial death of a Banaras Hindu University (BHU) student and ordered the State Government to pay the highest-ever compensation of Rs. 5lakh. **Atal Bihar Mishra**, a BHU student was killed in custody after he was dragged to the police station on "fictitious and frivolous" charges because of political differences between his father and a ruling party politician.

The issue came up before the NHRC after it rocked Parliament with the former **Prime Minister Mr. Chandra Shekhar making** a plea for its reference to the Commission. The Commission in its recent order said the State Government should pay within a month, Rs. 5 lakhs as interim compensation to Mr. Suresh Mishra, father of the youth. The Government should **"sympathetically" consider the family's** prayer for a suitable job to a member of the family on compassionate grounds, it said. Appropriate protection to the family of Mr. Mishra be given depending on the security and threat perceptions of the situation having regard to that fact that the family could legitimately apprehend retaliatory attitudes from the police officers and personnel involved against whom the accusation was made," it said. The Commission ruled that unless appropriate punishment was meted out to the officers responsible for this dastardly crime :. it would be difficult to contain and control custodial deaths. (a brute who behaves cowardly)

The commission taking cognizance of the complaint, asked its investigation wing to probe the incident. The investigation brought out stating and dis-

(Space for Hints)

turbing facts aginst the police. The State CID also undertook an investigation and confirmed that Atal Bihari Mishra had been killed by police. A prosecution was ordered against the police officers involved.

(Legal News and Views)

Commission reviews implementation of rehabilitation programmes of Bargi dam oustees

Issue relating to the speeding -up of various rehabilitation programmes for Bargidam oustees in Madhya Pradesh were discussed and the progress reviewed, in a meeting called by the National Human Rights Commission on 24 October 1997.

During the discussion, the commission asked the government of Madhya Pradesh to give prompt attention to the rehabilitation requirements as identified and agreed upon by the commission, representatives of the State Government and the dam oustees and to indicate the progress made so far.

Better co-ordination among four commission

Four commission (1) the National Human Rights Commission, (2) the National Commission for Minorities, (3) the National Commission for Scheduled Castes and Scheduled Tribes and (4) the National Commission for Women; have decided to work out arrangement, within the parameters of their respective statutes, for improved interaction, collaboration and co-operation between themselves.

In a meeting of the Chairpersons and Members of the Four Commission held on 27 October 1997, it was further decided to set up a coordination committee, which will be meeting periodically, to serve this objective.

The meeting was called on the initiative of the chairperson of the National Commission for Minorities Prof. Tahir Mahmood and was presided over by Mr. Justice M.N Venkatachaliah, Chairperson, NHRC. The National Commission for Women was represented by its Chairperson Ms. Mohini Giri while the SC & ST Commission, by its Vice-Chairperson Ms. Omen Deori. Repre-

Check Your Progress

4. Examine structural Frustration Theory.
5. Examine the Human Rights violation
6. Examine the threat to Human Rights Information Bill.
7. Write a short notes on custodial death and Solatium.

sentatives from National Commission for Backward Classes, University Grants Commission, several scholars and representatives of the various commissions participated in the deliberations held in two business sessions.

(Space for Hints)

Highlighting the importance of the Nationl Commissions, the Chairperson of the NHRC, Mr. Justice M.N. Venkatachaliah, said that all four commissions were basically concerned with the promotion and protection of human rights; NHRC had an encompassing mandate, while the other commissions dealt with the rights of specified groups.

The meeting decided to strive jointly to ensure the translation into action of the provisions of the constitution relating to justice, liberty, equalty, human rights, rights of minorities and backward classes besides gerenal justice for women.

Commission orders the dismissal of rapist teacher

The National Human Rights Commission has recommended dismissal of a physical training instructor for allegedly raping girls in various schools in Rajasthan and has also recommended the payment of compensation to a victim.

The commission directed the State Government to recover the amount of compensation from the accused and also recommended that he be prosecuted vigorously and expeditiously. The Commission took cognizance of the case after receiving complaints from a Delhi-based non-governmental organization, Sakshi.

(Legal News and Views, February 1998)

RIGHTS

10.10. SUPREME COURT AND CUSTODIAL VIOLENCE

Deaths in police lock-ups are occurring frequentty, and the fact that a majority of the victims are from the weaker sections of society, and the deaths are the outcome of third- degree methods, are nothing but human rights violations. Day by Day, custodial violence is increasing in our society.

(Space for Hints)

"To curb custodial violence", the apex court, in the year 1996, delivered a landmark judgement in the **public interest litigation filed by D.K Basu**. If the requirements mentioned in the judgement are followed scrupulously, custodial violence will be decreased, and the violators will be identified.

What is custody?

A question arises in our mind -what is custody? When does it start? The term 'Custody' is not defined anywhere in the Criminal Procedure Code (Cr. PC) or any statues. But it starts from the time of arrest. Custody does not begin at the point of time when the person is actually put inside a lock up room. It begins much before that. Custody starts the moment of being locked up in a police station, there may be a short or a long gap depending upon the circumstances. It is implied by the wording of Section 46 of Cr PC, and has been reiterated many times by the courts, that any violence which has taken place, at the time of arrest by the police is nothing but custodial violence.

Can ends, justify means?

The police is, no doubt, under a legal duty and has a legitimate right to arrest a criminal and to interrogate him during the investigation of an offence, but it must be remembered that the law does not permit use of third -degree methods or torture of accused in custody during interrogation and investigation with a view to solve the crime. Ends cannot justify the means. The interrogation and investigation into a crime should be, in a true sense, purposeful, to make the investigation effective. By torturing a person and using third -degree methods, the police would be accomplishing behind closed doors what the demands of our legal order forbid. No Society permits it.

Dr. Anand, who delivered the 46 page judgement on behalf of the court, said custodial death is perhaps one of the worst crimes in a civilised society governed by the Rule of Law. The rights inherent in Article 21 and 22 sub-clause (1) of the constitution required to be jealously and scrupulously protected. Any room of torture or cruel, inhuman or degarding treatment would fall within the ambit of Article 21 of the constitution, where it occurs during inves-

tigation, interrogation or otherwise. If the functionaries of the government become law-breakers, it is bound to breed contempt for law, and encourage lawlessness, thereby leading to anarchism. The judges observed that the precious rights guaranteed by Article 21 of the Constitution of India cannot be denied to convicts, undertrials, detenus, and other prisoners in custody, except the procedure established by law by placing such reasonable restrictions as are permitted by law.

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What are the two possible safeguards to check the abuse of police power?

Perhaps, are two possible safeguards to check the abuse of police power is proper training necessary. Judges also stressed for proper training and orientation of the police force consistent with basic human values. The force should be properly trained with basic human values and made sensitive to the constitutional ethos, and efforts must be to change the attitude and approach of the police personnel handling investigations so that they do not resort to questionable forms of interrogation, the judges opined in the judgement.

What are the requirements issued by the Supreme Court?

While disposing the petition on December 18, 1996, the Supreme Court issued the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalfs as preventive meaures :

IDENTIFICATION BADGE

* The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

ARREST MEMO AND ATTESTING WITNESS

* That the police officer carrying out the arrest of the arrestee shall bear a Memo of arrest at the time of arrest, and such memo shall be attested by at least one witness who may either be a member of the family of the locality from where the arrest is made. It is also to be countersigned by the arrestee, and shall contain the time and date of arrest.

(Space for Hints)

INFORMATION TO FRIEND

* A person who has been arrested or detained, and is being held in custody in a police station or interrogation centre or other lock ups, shall be entitled to have one friend or relative or another person known to him having interest in his welfare being informed, as soon as practicable place, unless the witness of the memo of the arrest is himself such a friend or a relative of the arrestee.

TELEGRAPHIC MESSAGE

* The time, place of arrest, and venue of custody of an arrestee, must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal aid organisation in the districts and the police station of the areas concerned telegraphically within a period of 8 to 12 hours after the arrest. [Now what is the alternate]

RIGHT OF THE ARRESTEE

* The person arrested must be made aware of his right to have some one informed of his arrest or detention as soon as he is put under arrest or is detaines.

DIARY ENTRY

* An entry must be made in the diary at the place of detention regarding the arrest of the person, which shall also disclose the name of the arrestee and the names and par1iculars of the police officials in whose custody the arrestee is.

PHYSICAL EXAMINATION

* The arrestee should,where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at the time. The 'Inspection Memo' must be signed both by the arrestee and the police officer affecting the arrest, and its copy provided to the arrestee.

PANEL OF DOCTORS

(Space for Hints)

* The arrestee should be subjected to medical examination by a trained doctor over 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by the Director of Health Services of the concerned State or Union Territory. The Director of Health Services should prepare such a panel for all districts as well.

INFORMATION TO MAGISTRATE

* Copies of all the documents including the memo of arrest should be sent to the concerned magistrate for his record.

MEETING WITH LAWYER

* The arrestee may be permitted to meet his lawyer during interrogation, throughout the interrogation.

POLICE CONTROL ROOMS AND NOTICE BOARD

* A police control room should be provided at all district and State headquarters, where information regarding the arrests and the place of custody of the arrestee shall be communicated by the officer knowing the arrest, within twelve hours of affecting the arrest, and it should be displayed conspicuously on the notice board of the police control room.

Failure to comply these requirements render liable for contempt of court?

The judges further made it clear in the judgement that the above requirements shall be followed by the police officers and other investigating agencies scrupulously. Failure to comply shall, apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court, and the proceedings for the contempt of court may be instituted in any high court of the country, having territorial' jurisdiction over the matter.

The judges further directed that the guidelines shall be forwarded to the Director General of Police and the Home Secretary of every State/Union Terri-

(Space for Hints) tory and it shall be the obligation to circulate the same to every police station under their charge and get the same notified at every station at a conspicuous place. The Judges also suggested to serve larger interests to broadcast the guidelines on All India Radio besides being telecast on national network of Doordarshan and by publishing being telecast on national network of Doordarshan and by publishing and distributing pamphlets in the local language for information of the general public. It appears so far no action has been taken either by the police or by the Government in this regard.

Is State Immune to pay compensation?

Till about two decades ago, the liability of the Government for the tortious act of its public servant was generally limited and the person affected could enforce his right in tort of by filling a civil suit and there again the defence of suporting of immunity was allowed to have its play. For the violations of fundamental rights to the life or the basic human rights, however the apex court had taken the view that the defence of sovereign immunity is not available to the state for the tortious act of the public servant and for the established violations guaranteed by Article 21 of the Constitution.

The claim in public law of compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the constitution is a claim passed on strict liability and is in addition to the claim available in private law for damages for tortious act of the public servants. Public law proceedings serve a different purpose than private law proceedings. Award of compensation for established infringement of indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law. Since the purpose of public law not only to civilize public power but also to assure the citizens that they live under a legal system guaranteeing that their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21 is an exercise of the courts in the public law jurisdiction for penalizing the wrong doer and fixing the liability for the public wrong on the state which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

The judges further opined that the amount of compensation as awarded by the court and paid by the state to redress the wrong doer in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

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The court made it clear that the guidelines should be followed scrupuloulsy till the law is made in this regard. failure to comply should render the concerned official liable for departmental action and also liable to contempt of the court.

Contempt preceedings may be instituted in any high court of the country, having territorial jurisdiction in the matter. Everyday, there are many failures, to comply the order, who will move the high court for contempt proceedings?

Andhra Pradesh Times. January 1998.

10.10.(1) USING OF HAND CUFFS

Some Questions and Answers

1. Whether using of hand cuffs is Legal?

Using of Hand Cuffs and fetters is not Legal. It is laid down as a rule by the Supreme Court that handcuff or other fetters shall not be forced on a prisoner-convicted or under trial while lodging in jail any where in the country or while transporting or in transit from one jail to another or from Jail to Court and back.

The police and the Jail authorities on their own, shall have no authority to direct the hand cuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

2. Why Hand Cuffs not to be used?

Hand Cuffs is prima facie inhuman and therefore, unreasonable, over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring, to inflict 'irons' is to resort to zoological strategies repuguant to Article-21.

(Space for Hints)

To prevant the escape of an under trial is in public interest, reasonable, just and cannot, by itself, be castigated. But to bind a man hand and foot, fetter his limbs with hoops of steel, shuffle him along in the streets and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture.

Insurance against escape does not compulsory require handcuffing there are other measure as whereby an escort can keep safe custody of a defence without the indignity and cruelty implicit in hand cuffs or other iron contraptions.

(Prem Shanker Shukla vs. Delhi Admn. AIR 1980 S.C. 1535)

3. Who is having the power to order Hand Cuffs?

Only the Magistrate/Court is having the power to order Hand Cuffing of prisoners, The police or the jail authorities have well grounded basis for drawing a strong inference that the particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the magistrate concerned and a prayer for permission to hand cuff the prisoner be made before the said Magistrate.

4. When can Policel Jail authorities request for the use of Hand-cuffs?

Where the Police or Jail authorities have all grounded basis for drawing a strong inference that particular prisoner is likely to jump jail or breakout the custody.

Then they can request for the use of Hand Cuffs.

5. When the Magistrate may grant permission for the use of Hand Cuffs?

The Magistrate may grant permission to hand cuff the prisoner, under certain conditions.

1 Save the rare cases of concrete proof regarding proneness of the prisoner to violence.

2. His tendency to escape. (Space for Hints)

3. He being so dangerous / desperate and

.4. Finding no other practical way of forbidding escape is available the Magistrate may grant permission to handcuff the prisoner.

6. Can Hand cuffs be used in grave crimes?

No. Merely because a person is charged with a grave offence, he can be Hand cuffed. He may be; very quiet, well-behaved docile or even timid. Merely because the offence is serious, the inference of escape-proneness or desperate character does not follow.

(Prem Shanker Shukla Vs. Delhi Administration.)

AIR. 1980 SC. 1535: 1980 SCC(Crl.) 815: 1980 Crl. 930.

7. What reasons should be rocorded, while using hand cuffs?

There must be well grounded basis for drawing as strong inference that the prisoner is likely to jump jail or break out of custody or play the Vanishing trick. The belief in this behalf must be based on antecedents which must be recorded and proneness to violence must be authentic.

Vegue surmises or general averments that the under trial is a cook or desperdo, sowdy or maniac, can not suffice.

8. On whom the burden of proof lies?

In short, save in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit-the proof of which is on him who puts the person under irons the police escort will be committing personal assault or may hurt him if he hand cuffs or fetters his charge.

Even in cases where, in extreme circumstances, hand cuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Otherwise, under Art.21, the procedure will be unfair and

(Space for Hints) bad in law. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to presiding Judge and get his approval. Otherwise, there is no control over possible arbitrariness in applying hand cuffs and fetters.

Once the Court direct that hand cuffs shall be off, no escorting authority can over rule Judicial direction.

(Prem Shanker Shukla's Case)

9. Can the police use handcuffs at the time of arrest under Warrant?

No. When the Police Arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffs unless the police has also obtained orders from the Magistrate for the hand cuffing of the person to be arrested.

10. Can the Police use hand cuffs at the time of arrest in a cognizable offence?

Where a person is arrested by the Police without warrant the Police Officer concerned may if he is satisfied, on the basis of the guidelines.

i.e.,

1. Concrete proof regarding the proneness of the prisoner to violence, his tendency.
2. His tendency to escape.
3. He being so dangerous/desperate and finding no other practical way of forbidding escape is available. Use of hand cuffs such a person, he may do so till the time he is taken to he Police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the order of the Magistrate.

Use of hand cuffs such a person, he may do so till the time he is taken to the police station and thereafter his prodution before the Magistrate.

Further use of fetters thereafter can only be under the order of the Magistrate. (Space for Hints)

11. Can Hand cuffs be used while in Remand?

No. In all the cases where a person arrested by Police, is produced before the Magistrate and remand-Judicial or Non Judicial is given by the Magistrate, the person concerned shall not be hand cuffed unless special order, in that respect is obtained from the Magistrate at the time of the grant of the remand.

12. If Subordinates violates the directions, are Superiors liable?

Yes. eventhough the Superior Officers (i.e., DPO and Sub Divisional Police Officer) are not directly involved in those incidents, must be held responsible for having not taken adequate steps to prevent such actions and even after the said actions came to their knowledge they condoned the 'same by not taking strict action against persons found responsible for this illegality.

In Dwivedi's case the Supreme Court directed that a note regarding the disapproval of their conduct be placed in the personal files of all of them. (AIR. 1996 SC. 2299: 1996 SCC(Cr) 612)

13. Is Magistrate liable?

Yes: If he fails to take necessary steps for the implementation of these direction he is liable for contempt of court. In Dwivedi's case Supreme Court directed that a note regarding the disapproval of the conduct be placed in his personal files.

14. Is Central Govt. bound to make rule or guidelines in regarding to use of Hand Cuffs?

Yes. Supreme Court directed the Union of India to frame rules or guide lines or regards the circumstances in which hand cuffing of the accused should be resorted to in conformity with the Judgement of Supreme Court in 'Prem Shanker Shukla's case and to circulate them amongst all the State Govt. and

(Space for Hints) Governments of the Union Territories. This part of the order shall be complied within three months.

Aeltemesh Rein, Advocate, S.C. of India vs. Union of India, AIR 1988 SC. 1768: 1988 CrL, J. (SC) 736)

15. Any Violation to this direction leads to compensation?

Yes. Ravikant S. Patil an under trial prisoner who was hand cuffed and taken through streets in a procession by the Police during investigation, the High Court of Maharastra awarded compensation for violation of the Fundamental Right under Art. 21 and it was up held by the Supreme Court. State of Maharastra vs. Ravikant S. Patil (1991 SCC(Crl.) 656.2 SCC 1991 373: JT 1991 SC. 442)

16. Any Violation of this direction is an offence?

Yes. Any violation of any of the direction issued by the Supreme Court by any rank of Police in the country or Member of the Jail establishment shall be summarily punishable under contempt of courts Act apart from other penal consequences under Law. Citizen for Democracy through its President Vs. State of Assam (AIR 1996 SC 2193.)

10.10.(2) USE OF FORCE -THIRD DEGREE METHOD

Some Questions and Answers

1. What is Force?

Force is not defined in Criminal Procedure Code. Any word and expression used in Criminal Procedure Code and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them in the IPC [2(Y) of Cr. P.C.] But Force is also not defined in Chapter II of IPC. but force is defined in S.349 of I.P.C and criminal force is defined in S. 350 I.P.C.

2. Who is authorised to use force?

The Police is the only agency authorised by law, to use force in the per-

formance of their duties. Such use of force should not only be in accordance with the provisions of law, but also the quantum should be irreducible minimum. (Space for Hints)

3.When the Police are permitted the use of Force?

The Police are permitted to use force under certain circumstances, mainbly in cases of arrest, search and handling unruly crowds and dispensing unlawful assemblies.

4. How much of Force can they use?

In those circumstances, the police are permitted to use Force. But they are not Permitted to use of more force than what is necessary.

5. Under what circumstances, the police can use of Force, while making arrest?

Section 46 of the Code (Cr.P.C.) lays down that if a person to be arrested by a police officer forcibly resists the endeavour to arrest him, or attempts to evade the arrest such police officer may use all means necessary to effect the arrest.

But nothing in this section gives a right to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life.

6. To what restraint can an arrested person be subjected to?

Section 49 of the Criminal Produre Code, however imposes a restraint on police officers as it lay down that the person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

7. Has the police got power to break open any outer or inner door or window of any house or place, if required, for search?

The police officer having authority to arrest any person acting under warrant of arrest has the power to enter any residence or place if he believes that the person to be arrested had entered in to, or is with in that place or residence.

(Space for Hints)

On demand by such person or police officer, the owner or the occupier of the place or residence must allow him to enter such place or residence and afford him all reasonable facilities for a search. (S.47(1) of Cr. P.C.)

If the person incharge of it refuses permission to enter and search the place, and after informing him of the authority of the person demanding entrance and the purpose of the search. (S.47(2) of Cr. P.C.)

The section 47(2) also authorises police officers to break open any outer or inner door or window of any house of place for arresting the person and having lawfully entered the house for liberating themselves.

8. Can force be used, if the members of the unlawful assembly do not disperse after they are commanded to do so?

Section 129 of the Criminal Procedure Code vests in Executive Magistrates and Police Officers (of the rank of sub Inspector and above) power to command an assembly of five or more persons likely to cause a disturbance of the public peace to disperse. If on being so commanded, any such assembly does not disperse or if without being so commanded, it conducts it self in such a manner as to show a determination not to disperse, any Executive Magistrate or Police officer as aforesaid, may proceed to disperse such-assembly by force and if necessary arrest and confine the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

The use of physical force by the police has thus explicity been provided in the law of Criminal Procedure for dispersal of unlawful assemblies.

9. How much of Force can they use?

Use of how much force may be considered as reasonble and necessary depends upon the facts of the situation, the endeavour of the police should be kept it down to the minimum necessary level.

10. Can any private person use force?

A private person can also use force in excercise of his right of Private defence.

11. What is the right of 'Private defence'? (Space for Hints)

Sections 96 to 106 of the Indian Penal Code lay down the law relating to right of private defence.

. This law gives to every person subject to the restrictions contained in S.99 right to defend.

- his own body, and the body of any other person, against any offence affecting the human body;

- his own property and other against theft robbery, mischief, criminal trespass.

12. How much force may be used by private person?

One can use only as much of force as in necessary to defend oneself.

13. What is torture?

'Torture' has not been defined in the constitution or in other penal laws. 'Torture' of a human being by another human being is essentially an instrument to impose the will of the 'strong' over the 'weak' by suffering.

The word torture today has become synonymous with the darker side of human civilisation.

[D.K. Basu Vs. State of W.B. 1997 CrL. J. 743 SC]

14. Is It legal for a police officer to use of force or to torture an accused?

It is not legal for police officer to use to force or to torture an accused person for obtaining a confession regarding the commission of an offence.

Articles 20 and 21 of the Constitution of India prohibit any person including a police officer from using force or any "third degree method" for obtaining a confession from an accused person.

(Space for Hints)

15. Is torturing an accused by a police officer or public servant to obtain any information of an offence?

Yes, causing physical harm to obtain a confession or to get information regarding an offence is a criminal offence punishable under Section 330 I.P.C.

Section 330 read as follows

Voluntarily causing hurt to extort confession, or to compel restoration of property:- Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the Restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations

a) A, a Police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence' under this seetion.

b) A, a Police-officer. tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

c) A, a Revenue officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z, A is guilty of an offence under this section.

d) A, a Zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

16. Is there any other provision in Indian penal code for causing grievous hurt to extort confession or to obtain any Information regarding a crime?

(Space for Hints)

Yes. It is there ie., Section 331 of I.P.C. It reads as follows:

Voluntarily causing grievous hurt to extort confession, or to compel restoration of property

Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or damand or to give information which may lead to the restoration of any property or valuable security shall be punished with imprisonment of either description for a term which extend to ten years, and shall also be liable to fine.

17. Can death caused by torture committed by a police officer be considered a murder?

It can be considered as a murder under Section 302 I.P.C., depending upon the facts and circumstances of the case.

18. What the phrase "third degree" means? ..

"Third Degree" refers to the use of coercive measures including inflicting of physical violence on suspects for extracting confession.

19. What is the origin of 'third degree'?

'Third Degree' has its origin in "Free-Masonry", an institution of skilled stone workers of the middle ages in Europe. It also refers to secret or Facit brotherhood with procedures, practices and pass words for its members.

20. How many degrees have been listed?

3 degrees have been listed in "Free-Masonry". But the 'third degree' is supposed to be the most painful. It is to bring this connotation the word "third degree" came to be, used.

21. Who brought this phrase into police Parlance?

In 1910, one Major Richard, the then president of the Association of Chiefs of Police U.S.A. has brought the phrase 'third degree' into police parlance to denote the “physical force" used on a suspect by the police to force him to tell the truth.

22. What is First Degree, Second Degree, Third Degree mean?

Major Richard clarified that first degree refers to legal arrest and custody. Second degree refers to illegal arrest and custody. Third refers to the physical force used on a suspect by the police to force him to tell the truth.

23. What is tarnishing the image of the police?

The practice of third degree methods in the investigation of cases in tarnishing the image of the police. Such a practice only alienates the police from the public.

24. Why Police resort to 'third degree' Methods'?

There are several factors resorting the police to 'third degree' Methods. First one is the increasing case load, the second one is the time constraint (to produce quick results the only method that is left the police to use torture and force) the third one is that of greater emphasis on statistics of criminal cases solved by the police. The fourth one is to extract money.

25. Where the investigating officer had to travel?

As rightly said by Shri R. Deb-"the investigating officer has to travel from evidence to accused" and not from accused to evidence. Padding and concoction, proceeding as they do from preconceived bias against the accused merely on the basis of an accusation, which may or may not be true, completely nullifies the quest for the truths. And above all as has been enjoined by Rule 3 of the police code of conduct.

26. Can Police punish the accused? (Space for Hints)

The police are not judiciary and they have no power to adjudge the guilt of the accused. Hence they have no power to punish the accused. The duty of the police is to place the evidence as it is before the court and abide by the verdict of the Court. Rule 3 of the Police Code of conduct lays down, "our police should recognise and respect the limitations of their powers and functions. They should not usurp the functions of the judiciary and sit in judgement on cases. Nor should they avenge individuals and punish the guilty".

27. Is third degree method Justified?

Police say that they are resorting to the third degree methods for doing quick justice. Which is not only tenable but also dangerous.

As Lord Shankey observed, "It is not admissible to do a great right but doing a little wrong".

28. What is custody, when does it starts'?

The term custody is not defined any where in the Criminal Procedure Code (Cr PC) or in any statues. But it starts from the time of arrest.

Custody does not begin at the point of time when the person is actually put inside a lock-up room. It begins much before that. Custody starts the moment the person submits to the control of the police, whether voluntarily or after the use of force, ie, to say from the moment the person loses the freedom of movement, which passes into the control of the police.

29. What Supreme Court suggested in Ramsager Yadav's case?

Supreme Court in State of U.P. Vs. Ram sager Yadav case (AIR 1985 SC 416) dealt with the custody deaths of Brij Lal a farmer in U.P. The Supreme Court observed We would like to impress upon the Government the need to amend the law appropriately so that policeman who commit atrocities on persons in their custody are not allowed to escape due to absence of evidence. The police officers are alone and none others can give evidence as regard the

(Space for Hints) circumstances in which a person in their custody comes to receive injuries. Bound by their ties of brotherhood, they often prefer to remain silent, and when they choose to speak, they put their own gloss upon facts and upon truths. The law on the burden of proof is such that it should be reexamined.

30. Whether this suggestion is examined?

In compliange, the law commission, examined the issue and suggested that the Indian Evidence Act, 1872 be amended by inserting Section 1148 which would introduce a rebuttable presumption that tnjufiel sustained by a person in police custody may be presumed to have been caused by the police officer in-charge. This would shift the burden of proof on the police officer.

31. How the proposed section 114.B reads?

It reads as follows :-

114B (1) In a prosecution (of a Police officer) for as offence constituted by an act alleged to have caused bodily injury to a person, if there is evidence that the injury was caused during the period when that person was in the custody of the police, the court may presume that the injury was caused by the police officer having custody of that person during that period".

(2) The court, in deciding whether or not it should draw a presumption under sublection (1) shall have regard to all the relevant circumstances, including, in particular, (a) the period of custody. (b) any statament made by the victims as to how the injuries were received, being a statement admissible in evidence, (c) the evidence of medical practitioner who might have examined the victim's statement or attempted to record it.

32. Whether the proposed section is inserted?

No. the Indian Evidence Act, 1872 has as yet not been amended. Which in unfortunate indeed.

33. What Is the recommendation of National Police Commmission In respect of custodial violence?

The National Police Commission had, recommended in their first report (Space for Hints) [February 1979] that is regard to the following categories of complaints against police, a judicial enquiry by an Additional Sessions Judge, nominated for purpose in every district by the State Government in consultation with the High Court, should be mandatory and held immediately

(i) Alleged rape of a woman in police custody:

(ii) Death or grievous hurt caused to a person in police custody; and

(iii) Death of two or more persons from police firing in the disposal of unlawful assembly.

On completion of the inquiry the judge shall send the report to the state Government, who shall publish the report and the State Government's decision thereon within two months.

34. Whether any action has been taken on this recommendation?

No, action has been taken in pursuance of this recommendation. But in the proposed nendments to Code of Criminal Procedure the proposals of National Police Commission are included.

35. How many types of third degree methods are existing?

Police are creating many number of third degree methods to use against human beings. Some are mentioned here under:-

1. Beating

2. Burning of parts of human body with cigarette

3. Denying food, water and sleep for days together

4. Forcing the arrested person to drink urine

5. Putting ice slabs on naked parts of human body

6. Suspending the person in head down position by his legs

(Space for Hints) 7. Prividing electric shock treatment

8. Providing hot water bottle treatment

9. Stripping the person, blackening face and parading him naked in public

10. Putting rats and/or crockaches inside the trouser of the person with his hands and legs tied down.

11. Inserting stick or live electrick wire in to body crevices.

12. Plucking hair or moustache

13. Making the person to stand hours together or stand on one foot with his hands up.

14. Making the person crouch in 'Z' position for hours together.

[Police Research and Development: 1995]

36. What are the fundamental principles of criminal jurisprudence?

Though it is nowhere expressly provided for either in our statutes or the Constitution the following principles have for a century been considered as fundamental to our criminal jurisprudence :-

1. The accused shall be presumed to be innocent till his guilt is proved in a court of law.

2. The burden of proof is on the prosecution to prove the guilt of the accused and not on the accused to prove his innocence.

3. The prosecution must prove its case "beyond all reasonable doubt".

4. If, there is any doubt regarding prosecution case, the benefit of doubt must go to the accused and he must be acquitted.

5. While the onus of proving any general or special exception in his favour is on the accused, he has to satisfy the test of preponderance of probabilities only and not the rigorous test of proof beyond all reasonable doubt.

6. Let ninty nine criminals go unpunished, but let not one innocent person suffer. (Space for Hints)

10.11.VICTIMS RIGHTS

SOME QUESTIONS AND ANSWERS

I.. What is Criminology?

Criminology in a nutshell be described as the science of crimes and criminals.

2. What is vicltmology?

Victimology is a nutshell could be described as the science of crimes and their victims.

3. Is it 'victim' justice system?

No, our justice system.is known as criminal justice system. It is excessively loaded In favour of the accused. Our legal jurisprudence is based let 99 criminals go unpunished, but let not one innocent person suffers. Victim became the forgotten person of our criminal justice system. The offenders are punished for the maintanance of order of the public of the society and the safety of the people since time immemorial. Harsh punishment is prescribed for the violators of law in old Hindu scriptures of Manusmriti. The deterrent punishment was considered important to control crime in the olden days. But subsequently it was realised that the deterrent punishment was ineffective to control crime. Hence the study of crime from the stand point of criminals. The focus of every-body connected with the justice system was shifted to the rights of undertrials and reformation of the convicts.

4. Who are victims?

Generally, victims means real victims. ie., immediate victims of crime. Victims may classified as under:

1. Direct victims such as real victims.

2. Indirect victims such as family members, dependents and the legal heirs of the persons or group harmed.

3. Victims who are born as a result of rape.

5. How the family members are considered as victims?

The death or disability of a bread-winner of the femily may bring the dependent family members especially women and children to the verge of chill penury or rank starvation.

6. How a victim could have suffered?

The victim could have suffered form

1. Physical injury
2. Injury on family
3. Financial Loss
4. Social distress
5. Psychological or mental stress
6. Harrassment from the police "
7. Harrassment of Trial Process

7. What are the human rights of a victim?

The human rights of the victim are

1. to be free from intimidation
2. to be informed of financial assistance
3. to be informed of legal assistance
4. to get back stolen property

5. to get speedy investigation (Space for Hints)

6. to get speedy trial

8. What are the rights of victim as witness?

Generally the victims of crime are reluctant to cooperate with the criminal justice system for many reasons. The witnesses including victims summoned to the police station for interrogation are hardly treated with dignity. Nor they paid any reasonable expenses as per the dictum of Sec. 160 (2) of Cr. P.C.

9. Can a victim be called to police station for Interrogation?

Female witnesses {including victims} should not be called to the police atatlon, for the purpose of interrogation. If called it is the violation of the provisions of Sec 160(1) of Cr. P,C. The police officer must go to the place in which such woman resides for the purpose of interrogation.

10. Is the victim entitled to know, the action taken by the Investigating officer upon the information lodged by him, relating to the commission of the offence?

Owing to ignorance of law or lack of sensitivity, many Police officers (investigating officer) do not inform the victim of the action taken by police relating to the commission of the offence reported to the police station as! per provisions of SeG, 173(2) (iii) of the Code of Criminal Procedure 1973.

11. What Sec. 173. (2) (ii) reads?

It reads as follows: The police officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

12. What is the dictum of the apex court in this regard?

The Supreme Court in Bhagwant Vs. Commissioner of police [1985 Crt. J. 521 : AIR 1985 S.C. 1285] has directed the Judicial magistrates to give an

(Space for Hints)

opportunity to the victims (informant) to be acquainted with the result of police investigation and also to raise objection, if any. before discharging the accused on the basis of final report submitted by police U/S 173 of Cr. P.C. This judgement should be followed by the Magistrates in order to keep the victim informed of the result of investigation of a criminal case initiated by him.

13. Can a victim instruct a pleader to prosecute any person?

Yes. A private person (Victim) can instruct a pleader to prosecute any person in any court. But the public prosecutor or Asst. Public Prosecutor incharge of the case shall conduct the case. [So 301 (2) of Cr. P.C.]

14. What is the role of the pleader appointed for that case?

The pleader shall act under the directions of the Public Prosecutor or Assitant Public Prosecutor, and may, with the permission of the court, submit written arguments after the evidence is closed in the case [So 310(2) of Cr. P.C.]

15. Is victim entitled to conduct the prosecution in every trial, before a court of session?

Victim is not entitled, Only a public prosecutor is entitled to conduct the prosecution in every trial before a court of session. [S 225 of Cr. P.C.]

16. Can the victim or the relation or interested persons of victim file application under Section 439 of Cr.P.C. for cancellation of bail granted to the accused?

No. They have no locus-standi to file the application of the cancellation of the bail as they cannot be treated on par with the public prosecutor. It is for the prosecution to satisfy itself whether by granting bail, the accused will be interfering with the trial or the evidence and if it finds that the accused is conducting himself prejudicial to the interest of the prosecution, it is open for the prosecution to file an application or bring to the notice of the court for cancellation of the bail. But it would not authorise the private person (victim) to step in the shoe of public prosector and file the application under Section 439(2) Cr. P.C. [Sardala Oamoder Vs. State of AP 1998 Crl. J 277]

17. What should be the mode of conducting any inquiry or trial related to rape?

An inquiry or trial related to rape or an offence under Section 376, Section 376-A, Section 376-B, Section 316-C or Section 376-0 of the Indian Penal Code should be conducted "in camera" [S.327 (2) of Cr. P.C.] It was held by the apex court that the trial court of rape cases invariably be done in-camera rather than in open court. [State of Punjab Vs. Gurmeet Singh and Others 1996 (2) S.C.C. 384]

18. Does the presiding Judge have the power to allow a particular person to attend in camera trial?

The Presiding Judge may allow any particular person to attend the inquiry or trial conducted in camera, and it is lawful 10 any of the parties to make an application to the presiding Judge to allow a particular person, to attend the inquiry or trial conducted in camera.

19. Is it lawful for any person to print or publish any matter is related to any proceedings conducted in Camera?

No. It would be unlawful for any person to publish any matter is relation to the proceedings of such cases except with the previous permission of, the Judges of the court as per the provisions of S. 327(3) of Cr.P.C.

20. What are the directions given by the Supreme Court in Deihl Domestic working Women's Forum case in Relating to compensation of victims?

The Supreme Court has given the following direction to the Government for assistance of the rape victims.

1. It is necessary, having regard to the Directive principles contained under 38(1) of the Constitution of India to set up "criminal injuries compensation Board". Rape victims frequently incur substantial financial loss. Some, for example, are two traumatised to continue, in employment.

(Space for Hints) 2. Compensation for victims, shall be awarded by the court on conviction of offender and the criminal injuries compensation Board whether or not in a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and expenses of child birth if this occurred as a result of the rape.

[1995(1), S.C.C. (Cri) -7]

21. Disclosure of identify of the rape victim is an offence?

Yes. S. 228A of Indian Penal Code reads as follows.

"Whoever prints or publishes the name or any matter which may make known the identity of any person against whom an offence under Section 376, Section 376-A, 376- B, Section 376-C or Section 376-0 is alleged or found to have been committed (hereafter in this Section referr,ed to as the victim) shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

(2) Nothing in sub-section (1) extends tc any printing or pubilcation of the name or any matter which may make known the identity of the victim if such printing or publication is -

a) by or under the order in writing of the officer-in-charge of the police station of the police officer making the investigation into such offence acting in good faith for the purposes of such investigation or

b) by, or with the authorisation in writing, the victim; or

c) where the victim is dead or minor or of unsound mind, by, or with the authorisation in writing of, the next of kin of the victim;

Provided that no such authorisation shall be given by the next of kin to anybody other than the chairman or the secretary, by whatever name called, of any recognised welfare institution or orgainsation.

Explanation:- For the purposes of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(3) Whoever prints or publishes any matter in relation to any proceedings before a :ourt with respect to an offence referred to in sub-section (1) without the previous permission of such court shall be punished with imprisonment or either description for a werm which may extend to two years and shall also be liable to fine.

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Explanation :- The printing or publication of the judgement of any High Court or the supreme Court does not amount to an offence with the meaning of the section.

22. What is the object of compensation?

The compensation means something given in recompense. The object of compesation is not to give punishment for the wrongdone. It is neither a reward nor a Junishment. The sole purpose is to make good the loss sustained by the victim or the legal representatives of the deceased.

23. What is compensation?

Compensation is the amount of money paid for the damage caused to, person or property.

24. How the compensation can be calculated?

The compensation is calculated on two broad heads:

(i) Special damage of pecuniary loss i.e. The loss which can be calculated in terms of money, ego : Loss of earnings, expenses for medical treatment etc.

(ii) General damage or non pecuniary loss i.e. the loss which cannot be calculated in an objective manner in terms of money i.e. loss Which cannot be calculated in an objective manner in terms of money ego loss of amenities, pain and suffereing, loss of expectation of life etc.

25. Can a criminal court order to pay compensation to the victim?

Section 357 (1) of Cr. P.C. provides that when a court imposes a sentence which includes a fine, the court may direct that the fine amount should be utilized

(Space for Hints)

a) in defraying expenses of prosecution.

b) in making payment in the loss caused to the victim

26. Is the court empowered to order the accused to pay unlimited compensation to the victim?

Yes. The court is empowered to order the accused person to pay compensation when it imposes a sentence, of which fine does not form a part.

The compensation is ordered to be paid on the ground of loss or injury caused the act for which the accused person has been sentenced.

The amount is specified in the order on the basis of the loss suffered by the concerned party.

In nutshell, the criminal courts can award unlimited amo~nt of compensation to the, victim under Section 357 of Cr. P.C.

27. Is Sub-section (3) of 5.357 Cr. P.C. a progressive legislation?

It is not mandatory as per the provision of Sec. 357(3) of Cr. P.C. But this provision came up for consideration before the apex court in Hari Kishan Vs. Sukhbir Singh [AIR 1988 SC 2127]. In this case, the accused assaulted the victim. The accused were intended the benefit under Section 360 Cr.P.C. the matter went up to the Supreme Court and the Supreme Court directed the accused to pay Rs. 50,000/- to the victim by way of compensation uls 357 (3) of Cr.P.C. This provision is not ancillary to other provisions of Cr.P.C., but in addition thereto. By this land mark judgment, the Apex Court directed all the subordinate criminal courts to excercise power of awarding compensation to the victims of offences in such a liberal way, that the victims may not have to rush to the civil courts for compensation.

29. What should the magistrate do when a person groundlessly arrested?

Whenever a person causes a police officer to arrest another person and it appears to the Magistrate that it was done without sufficient reason, the Magistrate may award compensation, not exceeding one hundred rupees, to be paid

by the person causing the arrest, to the person unjustly arrested for his loss of time and expenses in the matter [358(1) of Cr. P.C.]

(Space for Hints)

30. Can the court order the accused to pay the costs incured by the complainant In non cognizable cases?

The court can order the accused to pay to the complainant the cost incurred by him in the prosecution in a non-cognizable case in addition to the penalty imposed upon him.

The court can further order that in default of payment the accused must suffer simple imprisonment for a period not exceeding thirty days.

The costs may include any expenses incurred in respect of process fees, witnesses and pleader's fees, which the court may be considered reasonable. [Sec. 359 of Cr: P.C.]

31. Can the court grant compensation for accusation without reasonable cause?

A competent Magistrate, who tries a case, discharge or acquit the accused due to lack of reasonable grounds for making accusation against him, ask the complainant present in the court to show cause why he should not pay compensation to the accused. The Magistrate can order to pay compensation to the accused, if he is satisfied that there was no reasonable ground for making accusation. The amount that can be ordered to pay as compensation is an amount not exceeding the amount of fine he is empowered to impose. (Sec. 250 of Cr. P.C.)

32. Can the court order to pay compensation to an accused while releasing on probation?

While reallsing an accused on probation or with admonition the court may order the offender to pay compensation an.d cost to the victims under Sec 5 of the Probation of Offenders Act. 1958.

(Space for Hints)

33. What are the provisions relating to compensation in M. V. Act, 1988?

The Motor Vehicle Act, 1987 has recognised for awarding compensation to victims under three heads-

I. Liability to pay compensation on the principle of no fault (Under Section 140- 144)

II. Liability to pay compensation for death or permanent disablement on the principle of fault. (Under Section 165 to 176)

III. Compensation in cases of hit and run motor accidents. (under section 161 to 163)

34. Are there any other provisions relating to compensation?

The other provisions relating to compensation or enquiry connected with the loss or injury suffered could be found in.

1. Sec. 1A of Fatal Accidents Act, 1885
2. Sec. 3 of the Workmen's Compensation Act, 1923 '
3. Sec. 88. 88A and 90 of the Factories Act, 1948
4. Chapter VI of the Indian Railways Act, 1890 etc.

35. Can the State claim sovereign immunity?

No. Several courts including Supreme Court have been willing to abandon the "Notion of soverign immunity and to use their writ power to hold the state and its officers liable to pay monetary damges. In Nilabati Behera Vs. State of Orissa [AIR 1993 SC] the Supreme Court held -

“A claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which guaranteed in the constitution, is an acknowledged remedy for enforcement and proteCtion of such rights".

The judgement explained "the defence of sovereign immunity being in-

(Space for Hints)

applicable in the constitutional remedy. It is this principle which justifies the award of monetary compehsation for contravention of fundamental rights, when that is the only practical mode of redress available for the contravention made by the state or its servants".

36. Whether the family members of deceased convict claim compensation?

Andhra Pradesh High Court in Challa Remakonda Re Vs. State of Andhra Pradesh [AIR 1989 A.P. 235], wherein a prisoner told the prison authorities that he feared for his life while in jail and requested extra guard for protection. One day, because of the negligence of the prison guards on duty, a bomb was thrown at the prisoner by persons who had broken into the jail. The prisoner died and his family brought a civil suit against the State for monetary damages. The Court held that the State officers were grossly negligent and this negligence caused the death of the prisoner. The court further held that the state was liable to pay monetary demages to the amont of Rs. 1,44,000. It stated "where a citizen has been deprived of his life, or liberty, otherwise there is accordance with the procedure prescribed by law, it is no answer to say that the said deprivation was brought about while the officials of the state were acting in discharge of the Sovereign functions of the state. The claim for damages must succeed, this is the only mode in which the right to life guaranteed to the deceased by Article 21 can be enforced". It is unclear whether their case would apply in circumstance in which a prisoner was deprived of his or her to life and liberty by the gross neg~igence of prison or other state officials, However, some of the language of the court in general would seem to allow such an action: "Only where the State officials, act with gross negligence, resulting in deprivation of the life and liberty of the citizen, does the State become liable for compensation".

In Kewalpati Vs. State of U.P. [1995 S.C.C. Cr. 556] the Supreme Court held that the prisoners are entitled to constitutional rights and protection except to the extent deprived of it in accordance with law. The killing of Ramjit Upadhyay took place when he 88 serving out his sentence in jail, which resulted in deprivation of his contrary to law rid utter violat1ion of the provisions of

(Space for Hints) Article 21 of the Constitution. Accordingly, the tate of U.P. was directed to pay Rs. One lakh to the legal heirs of Ramjit Upadhyay within a period of three months from the date of order.

7. Are the Individuals liable for their prefunctory investigation?

In Gudalure M.J. Cherian Vs. Union of India 1995 S.C.C. Cr 925] on the direction of the Supreme Court CBI has conducted an investigation, filed enquiry report and pointed ut major lapses in the investigation on the part of Shri Subhash Kajla so, Gajraula Shri harat Ratan Balshni S.I. and Dr. Meera Singh L.M.O Moradabad Hospital whose action or omission resulted in loss of crucial evid,ence in the case'.

The Supreme Court has not only directed Govt. to suspend the said officers with immediate effect, but also to initiate disciplinary action for major penalty against them Inder their respective service rules. That apart, the apex court has directed that State of J.P. to pay a sum of Rs. 2,50,000/- as compensation to each of the victims of rape and a sum of Rs. 1 lakh to each of the other victims of crime. It is further directed by the Supreme Court that the State Government may recover the amount of money from the Officers who would be held guilty of lapses amounting to mis-conduct in the process of investingation of this criminal case.

38. Not providing timely treatment to a victim results violation of Human right?

Yes. It is held by the Supreme Court that failure on the part of a Government Hospital to provide timely medical treatment to a person in need-of such treatment results in violation of his right to life guaranteed under Article 21, of the Constitution. In the present case, **"there was breach of fundamental riaht of Hakim Seikh"** guaranteed under Article 21 when he was denied treatment at the various government hospitals which were approached for emergency medical treatment. It is, therefore, held by the Supreme Court that Hakim Seikh is entitled to get compensation from the State for violation of his fundamental right. The amount of compensation is fixed at 25,000/- to be paid by the State of West Bengal.

A copy of this judgement is sent to the Secretaries of Health Departments of all the States with direction to implement the following instructions for proper medical assistance in dealing with emergency cases by the Government Hospitals.

(Space for Hints)

i) Adequate facilities are to be made available at the Primary Health Centres where the patient can be given immediate primary treatment so as to stabilize his condition.

ii) Hospitals at the district level and Sub-Division level are to be upgraded so that serious cases be treated there.

iii) Facilities for giving specialist treatment are to be increased and made available at the hospitals at district level and sub-division level hav:ng regard to the growing needs.

iv) To ensure availability of bed in an emergency at State level hospitals one centralised communication system is to be evolved so that the patient can be sent immediately to the hospital where bed is available in respect of the treatment which is required.

v) The ambulance is to be adequately provided with necessary equipment and medical personnel.

vi). The Health Centres and the hospitals and the medical personnel attached to these centres and hospitals are to be geared to deal with larger number of patients needing emergency treatment on account of higher risk of accidents on certain occasions and in certain seasons.

[Paschim Banga Khet Mazdoor Samiti Vs. State of West Bengal 1996 (4) S.C.C. 37]

39. What are the broad pararmeters laid down by the apex court for the assistance of victims of rape?

One public interest litigation was filed by Delhi Domestic Working Women's Forum to espouse the pathetic plight of four domestic servants who

(Space for Hints)

were subject to indecent sexual assault by seven army personnels. In this case the Supreme court has held that rape is an experience, which shakes the foundation of the lives of the victims. The victims, more often than not, are humiliated by the police. They have invariably found rape trials a traumatic experience. The experience of giving evidence in court has be~n negative and destructive. The vicitms often say that they considered the ordeal in the court be even worse than the rape itself. The Supreme Court has given the following direction to Government for assistance of the victims.

i) Complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counselling or medical asssistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complaint's interests in the police station represent her till the end of the case.

ii) Assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this page and whilst she was being questioned would be of great assistance to her.

iii) Police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

iv) Advocates willing to act in these cases should be kept at the police station for the victims, who did not have a particular lawyer in mind or whose own lawyer was unavailable'.

40. What is the logic behind in granting interim compenstion to rape victim?

In a landmark judgement is Bodhisathwa Gautam Vs. Subhra Chakraborty [1996(1) S.C.C., 490 = 1996 SCC Crl. 133.] The Supreme Court awarded an interim compensation of Rs. 10001- per month to the victim of rape until her charges of rape are decided by the trial court. Complainant was a student and the accused was a lecturer, according to the FIR, the accused not only induced her and cohabited her giving false assurance of marriage but also fradulently gone through a certain marriage ceremony with knowledge and thereby dishonestly made the complainant to believe that she was lawful married wife of the accused. After issuance of the process of the accused, He filed on application in Gauhati High Court uls 482 Cr. P.C. for quashing the proceedings and it was reputed. Goutam approached the Supreme Court by way of special leave peltition, On consideration of the facts and circumstances of the entire case, the Supreme Court not only dismissed the appeal and issued suo-motu notice to him calling upon to showcause as to why he should not be asked to pay reasonable compensation. After hearing, Supreme Court directed him to pay the complainant a sum of Rs. 1000/- every month as interim compensation during the pendency of the criminal case.

The logic behind the order of interim compensation by the court is that complainants most cherished fundamental right to live with human dignity is violated even against private bodies and individual. The law laid down by the Supreme Court is that it is not necessary that the person who is the victim of violation of his fundamental right should personally approach the court as the court can itself take cognisance of the matter and proceed suomotu or on a petition of any public spirited individual.

10.12. PRISONERS RIGHTS

Some Questions and Answers

1. Whether the constitution has recognlsed the rights of the prisoners?

(Space for Hints)

Yes. The constitution of India has recognised the rights of prisoners. Prior to the framing of the constitution, the prisoners were considered as enemies of the society. They were condemned and.hated. The rule of law has recognised prisoners rights and they have to be treated as human beings.

2. What is the concept of punishment?

The concept of punishment has also undergone changes. It is felt that punishment in civilised so cities must not degrade human dignity of prisoners. The treatment of inmates of prisons must also conform to the basic standard of humanity and fairness.

3. Do prisoners have constitutional rights?

Prisoners do have constitutional rights. Courts have used Article 21 as a weapon to interpret the rights of prisoners.

4. What are those rights recognlsed by the courts which are Implicit In Article 21 of the constitution?

The courts have recognised mainly the following rights which are implicit in Article 21.

Those are

1. Right to be free from torture and maltreatment

2. The right to legal Aid

3. Right to speedy trial

4. Right to compensation

Check Your Progress

8. What was the Out come of D.K.Basu's case.?
9. When Hand cuffs can be used.?
10. What are the Victims Rights.?
11. What are the Prisoners Rights.?

5. What are the Important cases relating to Right to be free from torture and maltreatment?

The right to be free from torture and maltreatment well estalished as a part of Article 21 of the Constitution. In Francis Coralie Mullin vIs Admn., Union Territory of Delhi [AIR 1981 SC 746]. the Supreme Court held that:

"There is implicit in Article 21 the right to protection against torture (and) inhuman and degrading treatment". (Space for Hints)

In Rakesh Kaushik -vs- B.L. Vig Superintendent, Central Jail, Delhi AIR 1981 SC 746, and in serveral other cases, the courts used this right to 'ensure some minimum of social hygiene and banishmant of licentious excesses".

In Sunil Batra (II) -Vs- Delhi Administration [AIR 1980 SC 1579], a case which involved the claim on behalf of a prisoner whose anus had been penetrated and ruptured with a stick by a jail warden, the Supreme Court held that Article 21 prohibited mental torture, physical pressure and physical infliction and torture beyond the implicit limits of lawful imprisonment.

Is solitary confinement against to the spirit of Article 21 of the constitution?

Yes. "Solitary confinement" is defined as seclusion which totally excludes the prisoner from sight of other prisoners and from communication with other prisoners. "Solitary confinement" is only to be awarded by the court and not by the Superintendent [Sunil Batra confinement of a prisoner with only occasional access to other persons is to be treated as "solitary"]

Solitary confinement may only be used in the "rarest of rare cases" and with strict adherence to the above procedural guidelines [Kishore Singh VIs State of Rajasthan, AIR 1981 SC 625].

Is using the Handcuffs I against to the spirit of Article 21 of the constitution?

Yes. It is separately dealt with. The Supreme Court has issued guidelines regarding the use ofhandcutfs and fetters as forms of punishment and as "safe custody measures"

6. What are important cases relating to right to legal aid?

The right to legal aid is implicit as a part of Article 21 of the Constitution. In MH. Hoskot vs. State of Maharashtra, [1978(3) SCC 544; AIR 1978

(Space for Hints) SC 1548], the Supreme Court stated that if a prisoner is disabled from engaging a lawyer on reasonable grounds such as indigence (poverty), on incommunicate situation, a court shall, if the circumstances of the case, the gravity of the sentence and the ends of justice so require, assign competent counsel for the prisoner's defence, provided the party does not object to that lawyer. In other words, if a prisoner is poor and cannot afford a lawyer, the court, in most circumstances, must appoint one for him or her if one is so desired. The state must pay for the appointed lawyer's services. Also in Hoskot's case, the Supreme Court discussed the right to legal aid during the appeal process. The Supreme Court held that any procedure or practice which restricts a person's right to appeal is unfair and against the principles of natural justice and is therefore in violation of Article 21. The. Court stated certain requirements for a fair procedure under Article 21 during appeals;

a) The convict shall be given a free copy of the judgement from the court within a reasonable period of time so that they may exercise their right to apPecal.

b) If a convict seeks to file an appeal or revision every facility for exercising of that right must be made available by the jail adminstration.

c) Free legal aid should be provided to the convict who is poor or otherwise unable to secure legal assistance, provided "the ends of justice call for such services",

In Khatri vs State of Bihar, [AIR 1981.S.C928] "(the Bhagalpur blinding case) the Supreme Court held that the right to free legal services was "an essential ingred ient of reasonable fair and just procedure for a person accused of an offence". The state must provide free legal services to anyone accused of an offence who can not afford them. The Judge or magistrate [See also Sheela Barse Vs; State of Maharashtra [AIR 1983SC318], and Hussainara Khatoon (111) Vs State of Bihar; [AIR 1919 SC 1377].

In Sheeta Barse vIs State of Maharashtra AIR 1983 SC 318, the Supreme Court stated: .It is therefore absolutely essential that legal aid be made

available to prisoners in jail whether they be undertrials: or convicted prisoners. (Space for Hints)
For instance, to vindicate his innocence or defend his constitutionat or legal rights or to protect himself against torture or ill-treatment or oppression or harassment at the hands of his custodians.

In Sukdas v/s. Union Territory Arunachal Pradesh [AIR 1986 SC 99,1986(2) SCC 401), the Supreme Court held that the magistrate or sessions judge trying a case is obligated to inform the accused, who on "co" viction would be liable for imprisonment, of the right to free legal services. A trial conducted without legal assistance being provided or offered in such sanctions, is to be set aside because of the fatal constitutional infimity (See also Hussainara Khatoon (Ill) : Badri vs State of MP., 1988 Cri. L.J. 1592].

In Nandini Satpat -Vs- P.L. Dani AIR 1978SC1025, the Supreme Court held that the accused has a right to legal counsel at the time of "custodial interrogation" (i.e. questioning by the police officers at the police station) as a part of the right to counsel and as a part of the right against self-incrimination in, Articles 22(1) and 20(3). It should also be noted that this case requires the police to wait for a "reasonable while" for an advocate's arrival, It also requires that the police, before questioning an accused, always warn the accused about the right to silence and against self-in-crimination (i.e. that the accused does not have to answer any questions). If the accused is literate then the police must take the accused's written acknowledgement of the giving of the warning. The substance of this right is that an accused does not have to answer any questions if he or she does not want to.

7. What are important cases relating to right to speedy trail?

Speedy Trial is the essence of the criminal justice, though the right to speedy trial has not been specificatliy included as a fundamental rightbut the Supreme Court held in AIR 1979 SC 1960 that "the right to speedy trial is implicit in the right to fair trial which has been held to be a part of the constitution", According to the Supreme Court in Hussainara Khatoon (I) [AIR 1978 SC 1360], implicit in the broad sweep and content of Article 21," The Supreme Court also said that the right speedy trial means "reasonably expeditious trial"

(Space for Hints) and is an "integral and essential part of the fundamental right to life and liberty enshrined in Article 21'. [See also Kadra Pehadiya -Vs- State of Bihar, AIR 1981 SC 939 [Any accused person who is denied the right to a speedy trial is entitled to approach the Supreme Court for the purpose of enforcing their right.

The Supreme Court, according to Kadra Pehadya's case. in discharge of its constitutional obligation, has the power to give necessary directions to state governments and other appropriate authorities, to secure the right to a speedy trial for the accused Often these directives come in the form of an order to the High Courts to try cases within certain periods of time, such as 3 or 4 months. However, they also could come in the form of Supreme Court directions to the state to strengthen the investigatory machinery, set up new court houses, provide more staff and equipment to the courts, or appoint additional judges [Hussainara Khatoon -VS- Home Secretary, State of Bihar [AIR 1979SC 1369]. It is clear that the state is forbidden from denying the constitutional right to a speedy trial on the ground that it does not have enough money, or for other financial reasons. The state is under a mandate to ensure speedy trials and must do whatever is necessary to be done in order to ensure this.

If an undertrial prisoner has been in detention for a period longer than the maximum term for which he or she could have sentenced if convicted, the detention is illegal under Article 21 and the prisoner is entitled to "immediate" release. [Husainara Khatoon (II), AIR 1979 SC 1369].

What should the court take into consideration while quashing cases?

In State of Maharashtra vis. Champalal Punjaji Shah [AIR 1981 SC 1675], the Supreme Court said that in deciding whether there has been the denial of a speedy trial, the court is entitled to take into consideration whether the accused was responsfule for part of the delay and whether he or she was actually prejudiced in the preparation of his or her defence by reason of the delay. The court can take into consideration whether the delay was unintentionally caused by either overcrowding or understaffing of the prosecutor's office. The conviction under this case would have to be quached (set aside) if an accused was prejudiced in the preparation of his or her defence.

Is jail a place for treatment of the mentally ill? (Space for Hints)

In Veeni Sethi -Vs- State of Bihar [AIR 1983 SC 339], the Supreme Court commended that the jail is not a place for treatment of the mentally ill and, if possible, mentally ill prisoners should be provided with care in other institutions. The court ordered that all such mentally ill prisoners must be examined every 6 months and if found to be sane must be released at once. In Veeni Sethi's case, and Sant Bir -Vs- State if Bihar.

[AIR 1982 SC 1470], the Supreme Court addressed the issue of undertrial prisoners who had been insane at one time but were later declared sane, yet still languished in prison. The basic scenario in these cases was that a person was arrested and found "unsound of mind" and incapable of making a defence. Their trials were stayed and they were kept in safe custody under "proper treatment" in prison until the time that they became sane, so that their trial could resume. The prison officials were requjred to submit psychiatric reports every 6 months but did not regularly submit them. At a later point in time, these prisoners were found to be sane, yet because of bureaucratic tangles and general incompetence, they were neither released nor given a trial. In both of these cases, the Supreme Court ordered these undertrials to be immediately released, as they had already been in prison longer than if they would have been convicted at trial.

Is right to speedy trial applicable to child prisoners?

The Supreme Coort, in Sheela Barse -Vs- Union of India [AIR 1986 SC 1736], discussed the right to a speedy trial for children. The Court held that with regard to complaints or FIR's filed against children less than 16 years of age for offences punishable with not more than 7 years of imprisonment:

a) Investigation must be completed within 3 months from the date of filing of the complaint or FIR; and

b) If so filed, the case must be tried and disposed of within a maximum period of 6 months at the most (from the time of filing of the charge sheet). If these time periods are not observed, then the prosecution should be

(Space for Hints)

quashed (case dropped). This case, of course, only applies to child prisoners.

8. What are important cases relating to right to compensation?

State or its officers. Often courts have refrained from awarding such compensation on the ground that the State is immune from such liability under the doctrine of "sovereign immunity".

What is Sovereign Immunity?

Sovereign Immunity means that a State or its officers cannot be held' liable for damages caused during the exercise of their official functions [Kasturi Lal vis. State of Uttar Pradesh., AIR 1965 SC 1039].

Whether the view of the courts have changed?

The courts have until recently, been reluctant to grant compensation under their writ jurisdiction under Articles 32 or 226. This also has changed. For example, in MC. Mehta -Vs- Union of India, [AIR 1987 SC 1086], in Supreme Court held that its power under. Article 32 includes the power to issue writs and directions as well as the power to forge new remedies and fashion new strategies. Under Article 32, the court could prevent breaches of fundamental rights as well as provide relief in the form of monetary compensation for the breach of fundamental rights in appropriate cases.

Several Courts including the Supreme Court have willing to abandon, the notion of sovereign immunity and to use their writ power to hold the State and its officers liable to pay monetary damages.

Several courts have awarded monetary compensations to prisoners whose rights have been violated by prison officials.

In Challa Ramakonda Reddy -Vs- State of Andhra Pradesh [AIR 1989 A.P. 235], a prisoner told the prison authorities that the he feared for his life while in jail and requested extraguards for protection. One day, because of the negligence of the prison guards on duty, a bomb was thrown at the prisoner by

persons who had broken into the jail. The prisoner died and his family brought a civil suit against the state for monetary damages. The A.P. High Court held that the state officers (the jail guards) were grossly negligent and that this negligence caused the death of the prisoner. The court further held that the state was liable to a monetary damages to the amount of Rs. 1,44,000. It stated: "Where a citizen has been deprived of his life, or liberty, otherwise than in accordance with the procedure prescribed by law, it is no answer to say that the said deprivation was brought about while the officials of the state were acting in discharge of the sovereign functions of the State. The claim for damages must succeed. Indeed, this is the only mode in which the right to life guaranteed to the deceased by Article 21 can be enforced".

(Space for Hints)

It is unclear whether their case would apply in circumstance Article 21 right to life and liberty. "Only where they (state officials), act with gross negligence of prison or other state officials, but did not actually die as a result. However, some of the language of the court in general would seen to allow such an action: Only where they (state officials) act with gross negligence, resulting in deprivation of the life and liberty of the citizen, does the state become liable for compensation".

In Rudal Shah -Vs- State of Bihar [AIR 1983 SC 1086]. Rudu Shah was detained illegally in the prison for over 14 long years even after his acquittal in a full dressed trial. He filed a Habeas Corpus petition in the Supreme Court and obtained the relief of his release and also successful in getting the reliefof compensation from the State for his illegal detention to the tune of Rs.30,000 as an interim measure under the orders of the Supreme Court, in addition to the sum of Rs. 5,000 already paid to him by the state. In this connection, the Apex court observed: "This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of the compensation passed by us is, as we said above, in the nature of palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Shah. The

(Space for Hints) Leviathan will have liberty to raise those points in that suit. Until then we hope there will be no more Rudul Shahs in Bihar or elsewhere (para 12).

In Sebastian M. Hongray -Vs- Union of India, (1984) 3 SCR 544 : AIR 1984 SC 1026, in a petition for writ of Habeas Corpus, the Supreme Court held that the burden was obviously on the respondents to make good the positive stand of them in reponse to the notice issued by the court by offering proof of the stand taken when it is shown that the person detained was last seen alive under the surveillance, control and command of the detaining authority. In the circumstances, the court awarded exemplary costs on the failure of the detaining authority to provide the missing persons on the conclusion that they were not alive and had met with an unnatural death.

In Bhim Singh -Va- State of Jammu and Kahmlr (1985) 4 SCC 677 : AIR 1986 Sc 494), the Supreme Court held that the illegal detention in police custody of the petitioner Bhim Singh constitutes violation of his rights under Articles 21 and 22(2). The Apex Court while exercising Its powers to award compensation under Article 32 directed the state to pay monetary compensation to the petitioner for violation of his constitutional right by way of exemplary costs.

In Saheli a Women's Resources Centre -Vs- Commissioner of Police, Delhi(AIR 1990 SC 513), the Supreme Court held that in a case where violation of Article 21 results due to the action by a police officer, compensation is to be awarded against the State because of its vicarious liability for tortious acts of its employees. In this case, a 9 years child, Naresh, was beaten and thrown away by the police in connection with the a dispute of eviction, and died due to fever and pneumonities caused by injuries,

Is Sovereign Immunity a Defence against a Claim In public Law?

In Smt. Nilabati Behera alias Lalita Behera -Vs- State of Orissa (AIR 1993 SC 1960), the Supreme Court observed that a claim in public law, ie under Article 32 or 226 of the Constitution for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the consti-

tution is an acknowledged remedy for enforcement and protection of such rights. (Space for Hints)
A claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is distinct from and in addition to the remedy in private law for damages for the tort resulting from the contravention of the fundamental right.

In the above case, a letter dated 14.09.1988, sent to the Supreme Court by Smt. Nilabati Behera alias Lalitha Behera was treated as a writ petition under Article 32 of the Constitution for determining the claim of compensation made therein consequent upon the death of petitioner's son, Suman Behera, who was about 22 years of age, in police custody. The deceased was taken from his home by the police at about 8 a.m. on 1-12-1987 by respondent No.6, Sarat Chandra Bank, Asstt. Sub-Inspector of Police of Jaraikela police outpost under P,S. Bisra, District Sundergarh in Orissa, in connection with the investigation of an offence of theft and detained at the police station. At about 2 p.m, the next day, i.e., 2-12-1987, the petitioner came to know that the dead body of her son, Suman Behera, was found with multiple injuries. It was felt to be an unnatural death by the Supreme Court based on the findings of the enquiry officer who conducted the enquiry on the directions of the highest court, and held the State of Orissa liable to pay compensation to the tune of Rs.1 ,50,000 to the petitioner and a further sum of 10,000 as costs to the Supreme Court legal Aid Committe. **Dr. Anand, J.** while concurring the judgement of Verma, J. observed to make an order of monetary amend in favour of the petitioner for the custodial death of her son by ordering paryment of compensation by way of exemplary damages.

In the above case, the Apex Court also observed that State should be prepared to forge new tools and devise new remedies for the purpose of vindicating these precious Fundamental Rights. Article 32 which in itself a remedy can impose a constitutional obligation on the Supreme Court to forge such new tools for doing complete justice and enforcing the Fundamental Rights which also enables to award monetary compensation in appropriate cases where that is the only mode of redressal available. Article 142 is also an enabling provision in this regard. This remedy in public law (i.e., under Article 32) has to be more

(Space for Hints) readily available when invoked by the have nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tampered by judicial restriant to avoid circumvention of private law remedies as more appropriate. Similar views were also expressed by the Supreme Court in the **Union Carbide Corporation -Vs- Union of India** (1991) 4 SCC 584 : AIR 1992 SC 248).

In **Kewalpati -Vs-. State of UP.** [1995 S.C.C. (Cri) 556] the Supreme Court held that the prjsoners are entitled to constitutional rights and protection except to the extent deprived of it in accordance with law. The killing of Ramjit Upadhyay took place when he was serving out his sentence in jail, which resulted in deprivation of his life contrary to law and utter violation of the provisions of Article 21 of the Constitution. Accordingly, the State of U.P. was directed to pay Rs. 1 Lakh to the legal heirs of Ramjit Upadhyay within a period of three months from the date of order.

10.13. LAWS GIVING SPECIAL RIGHTS TO WOMEN

In order to rectify the unequal position of women and to give meaning and content for their rights, many laws were enacted, some before the adoption of the constitution and more thereafter. Based on their nature, they can be broadly categorized as constitutional law, labour laws, criminal laws, family laws and other civil laws. Some of these laws are listed below:

Constitution of India

Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws with in the territory of India. Simply it proclaims equality of all persons.

Article 15(1) prohibits' the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them'. Simply it states that there can be no discrimination between citizens on the ground of religion, race, caste, sex, place of birth or any of them.

This right is available to the citizens against the state only.

Article 15(3) proclaims 'Nothing in this article shall prevent the state from making any special provision for women and children.

(Space for Hints)

Simply Article 15(3) provides for the state to make special provision in, relation to women and children, Based on that well accepted logical special provisions are made to guard the interests or woman and children, in several laws, both civil and criminal.

Article 16(1) and Article 16(2) prohibits discrimination in general and also discrimination because of sex in offices and those employed under the State.

Article 39(a) of the Constitution provides that the State shall in particular direct its poticy towards securing that citizens, men and women equally, have the right to an adequate means of livelihood. This is also a directive principle of State policy.

Articie 39(c) of the Constitution requires that the State secures health and strength of workers, men and women and that children are not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age and strength. This again is a directive principle of State policy.

Article 51 (A) (e) of the Constitution provides that it will be the duty of every citizen of India to renounce practices Cerogatory to the dignity of women.

Labour Laws

a) Maternity Benefit Act, 1961

b) Equal Remuneration Act, 1976

Although some laws are not gender specific, they also concern women. They are:

c) The Workmen's Compensation Act, 1923

d) The Minimum Wages Act, 1948

e) The Factories Act, 1948

(Space for Hints)

f) The Employees State Insurance Act, 1948

g) Plantation Labour Act, 1951

h) The Contract Labour (Regulation and Abolition) Act, 1970

i) The Bonded Labour System (Abolition) Act, 1976

j) The Inter-State Migrant Workers Act, 1979

k) The Child Labour (Prohibition and Regulation) Act, 1986

Criminal Laws

The Indian Penal code itself contains many provisions pertaining specially to women.

They are:

Sec. 228A	:	Punishment for discloure of the identity of victim of certain offences like rape
Sec.3048	:	Dowry Death
Sec.354	:	Outraging the modesty of a woman
Sec.361	:	Kidnapping from lawful guardiandhip
Sec.363	:	Punishment for kidnapping
Sec.366	:	Kidnapping, abducting or inducing woman to compel her marriage etc.
Sec. 366A	:	Procuration of minor girl
Sec. 3668	:	Importation of girl from foreign country
Sec. 372	:	Selling minor for purposes of prostitution etc.
Sec. 373	:	Buying minor for purposes of prostitution etc.
Sec. 375	:	Rape

Sec. 376 : Punishment for rape (Space for Hints)

Sec. 376A : Intercourse by a man his wife during separation

Sec. 3768 : Intercourse by public servant with woman in his custody

Sec. 376C : Intercourse by Supdt. of Jail, Remand Home etc. with inmate

Sec. 3760 : Intercourse by any member of the management or the staff of a Hospital with any woman in that Hospital

Sec. 493 : Cohabitation caused by a man deceitfully inducing a belief of lawful marriage

Sec. 494 : Marrying again during lifetime of husband or wife

Sec. 495 : Offence under Sec.494 with concealment of former marriage

Sec. 496 : Marriage ceremony fraudulently gone through without lawful marriage

Sec. 497 : Adultery

Sec. 498 : Enticing or taking away or detaining with criminal intent a married woman

Sec. 509 : Eve teasing

The Criminal Procedure Code has the following provisions

Sec. 51 (2) : Regarding search of arrested female

Sec. 125 to 128 Orders for maintenance of wives etc.

Sec. 160(1) : Provision says that a female witness has to to be examined at her place of residence only.

(Space for Hints)

The other laws are

a) The Child Marriage Restraint Act 1929

b) The Prohibition of Child marriage Act. 2006

c) The Immoral Traffic (prevention) Act 1956 -(Amendment 1986)

d) The Dowry Prohibition Act 1961 (Amendment 1984 and 1986)

e) Criminal Law Amendment Act, 1983

f) The Indecent Representation of Women (prohibition) Act, 1986

g) Commission of Sati (Prevention) Act 1987

h) Indecent Repre sontation of women (Prohibition) Act.1986.

i) The Tamil Nadu Prohibition Harassment of Women Act 1998. (Eve Teasing Act)

Family Laws

These laws cover personal laws of various communities, Hindu Personal law was overhauled in 1950's to give women right to inheritance, to adoption, to divorce, and to impose monogamy. Personal laws of other communities have generally remained untouched on the ground demand of Legislative intervention must from them before the State intervenes. Mention, however, needs to be made of the Special Marriage Act, 1955 in this regard.

Other Civil Laws

a) Thg Legal Service Authorities Act, 1987

b) The Family Courts Act, 1984

c) Domestic violence Act-2005.

10.14.LAWS RELATING TO THE CHILD

(Space for Hints)

The Constitution of India guarantees certain Fundamental Rights to all Indian citizens including children. A comparative study of the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child and Parts III & IV of the Indian Constitution would show that the rights envisaged in. the International Instrument are more or less provided for adequately in the constitution. Briefly, the rights guaranteed under the constitution are:

1. Right to Equality

Article 14 : Equality before law

Article 15 : Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 16 : Equality of opportunity in matters of public employment;

Article 17 : Abolition of intouchability.

.Article 18 : Abolition of titles.

II. Right to Freedom

Article 19 Protection of certain rights regarding freedom of speech etc.

Article 20 : Protection in respect of conviction for offences.

Article 21 Protection of life and personal liberty.

Article 22 Protection against detention in certain cases.

III. Right against Exploitation

Article 23 Prohibition of traffic in human beings and forced labour.

Article 24 Prohibition of employment of children in factories, etc.

(Space for Hints) **IV. Right to Freedom of Religion**

Article 25 :	Freedom of conscience and free profession, practice and propagation of religion.
Article 26	Freedom to manage religious affiars.
Article 27	Freedom as to payment of taxes for promotion of any particular religion.
Article 28	Freedom as to attendence at religious instruction or religious worship in certain educational institution.

V. Cultural and Educational Rights

Article 29	Protection of interests of minorities.
Article 30	Right of minorities to establish and administer educational institutions.

VI. Right to Constitutional Remedies

Article 32	Right to move the Supreme Court etc.

While these rights are common to all, including children, there are, in addition, certai, fundamental rights specially for children incorportated in the constitution itself. Thus Article 15(3) permits the State to make special provisions for children modifying the equality principle contained in Article 14. Again, Article 24 provides for prevention of employment of chi\dren below 14 years in any hazardous employment. Then, according to Art. 39 of the Directive Principles of state Policy, "The State shall. in particular direct its policy towards securing -(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and (f) that children are given opportunities and facilities to deve\op in a healthy manner and in conditions of freedom and dignity and that chi\dhood and youth are protected against exploitation and aganist moral and material abandonment".

Another special right recognized is the child's right to education. Art. 45 declares that "the State shall endeavour to provide. within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of fourteen years". The National Policy on Education (1986) as well as goals for Education for all in India (1990) reaffirm the country's commitment to universalization primary education by the year 2000.

(Space for Hints)

To give meaning and content to the special status given to children under the constitution, a number of laws have been enacted from time to time. These include:

1. Young Persons (Harmful publications) Act, 1956.
2. The Hindu Minority & Guardianship Act, 1956,
3. The Guardianship and Wards Act, 1890 (Amendment, 1956)
4. The Hindu Adoptions and Maintenance Act. 1956 (Amendment, 1968)
5. The Women and Children's Institution (Licensing) Act, 1956 (Amendment, 1960).
6. The Probation of offenders Act, 1958
7. The orphanages and other Charitable Homes (supervision and control) Act, 1960,
8. Apprentices Act, 1961.
9. The Children (Pledge & Labour) Act, 1933 (Amendment, 1970),
10. Child Marriage Restraint Act, 1929 (Amendment, 1978)
11. The Prohibition of Child Marriage Act 2006.
12. The Immoral Traffic (prevention) Act, 1956 (Amemdment, 1986)

(Space for Hints) 13. Child Labour (prohibition and Regulation) Act, 1986, and

14. The Juvenile Justice Act. 2000 with amendemnts on 2005.

Besides the above laws having a direct bearing on children, special provisions concerning children exist in a number of other laws such as the Indian Penal Code, the Indian Evidence Act, the Criminal Procedure Code etc" some of which are given below:

Indian Penal Code

Sec.82 Act of a child under seven years of age.

Sec.83 Act of child above seven and under twelve, of immature understanding

Sec.293 Sale, etc of obscene objects to young persons

Sec. 305 Abetment of suicide of child.

Sec. 317 Exposure and abandonment of child under twelve years by parent or persons having care of it.

Sec. 363-A Kidnapping or maiming a minor for purposes of beggingSec. 363-A Procuration of minor girls.

Sec.369 Kidnapping or abducting a child under ten years with intent to steal from its person.

Sec. 372 Selling minor for purposes of prostitution etc

Sec. 373 Buying minor for purposes of prostitution etc.

Sec. 376(2)(f) Punishment for rape on a women when she is under twelve years age.

Indian Evidence Act

Sec. 112 : Birth during marriage conclusive proof of legitimacy

Sec. 125 : Order for maintenance of children.

Sec. 360 : Order to relase on probation of good conduct or after admonition

It is evident from the various legislation listed above and the 1974 National Policy Resolution on children that legislative protection for children has been steadily expanding What is more, 'these legislative provisions have been progressively interpreted by the courts thereby enlarging and concretising standards directed towards child care and welfare'.

10.15. SUMMARY

In this lesson we have studied about the great ideas of Jeremy Bentham -the methametision who calculted in the olden times about the pleasure and pain principle and employed in the treatment of offenders. Enrico Ferri - gave doctrine of "Criminal satutaion". He advocated "free Trade" and reduction of "Hours of Labour" and lower interest on Public securities and so many.

10.16. KEYWORDS

1. Jail Conference - a conference about the inmates of the Jail.
2. Released Prisoners - a person released after spending some time in Jail.
3. After - care - Care taken by the Govt. Over the person released from Jail.
4. Repression - the feelings of a person whose freedom is suppressed by power.
5. Affront - Open insult.
6. dastard - a brute who behaves cowardly.

(Space for Hints)

10.16. ANSWER TO CHECK YOUR PROGRESS

For Question No. 1. Refer Para. 10.2

For Question No. 2. Refer Para. 10.3

For Question No. 3. Refer Para. 10.3

For Question No. 4. Refer Para. 10.6

For Question No. 5. Refer Para. 10.8

For Question No.6. Refer Para. 10.9

For Question No.7. Refer Para. 10.9

For Question No. 8. Refer Para. 10.10

For Question No. 9. Refer Para. 10.10(1)

For Question No. 10. Refer Para. 10.11

For Question No. 11. Refer Para. 10.12

10.17. MODEL QUESTIONS

1. Examine the contribution of Jeremy Bentham.

2. What are suggestions of Enrico Ferri for reduction of Crimes. ?

3. What are the Role of Voluntary Agency ?

Suggested Reading

1. Ghosh.S. - Open Prisons and inmates

2. Naresh Kumar - Constitutional Rights of Prisoners.

3. Reckless. W.C. - The Crime Proplem

(Space for Hints)

4. Mullah Committee Report on Prison Reforms

5. Christopher J.Emmins . - A Practical approach to sentencing

6. K. Chokalingam - Issues in Probation in India

7. S.K. Bhattacharya - Social Defence

8. Juvenile Justice (Care and Protection) Act

And

Probation of Offenders Act.

1) -by Arul Selvan

2) A.I.R. Journals

9. Criminal Justice - Situations & Decisions

by - Howard C. Daudistel

William. B. Sanders

David F. Luckenbill

10. Gillin - Criminology

11. Correction of the Convicted

- Law, Theory, Practice

- By Nikolai Struchkov

- Progress Publishers, Moscow.

12. Contemporary Corrections

- Paul. W. Tappan

13. Legal News and views 1998

(Space for Hints)

14. Andhra Pradesh Times 1998

15. Hindustan Times, 1997

16. The Hindu June, 1997

17. Human Rights News letter, June 1997

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(Space for Hints)

MODEL QUESTION PAPER

(For the University Examination)

PAPER II -PENOLOGY AND CORRECTIONAL ADMINISTRATION

Time: 3hrs.

Answer any FIVE questions. All questions carry equal Marks.

1. Explain in detail the **"various general theories"** of punishment and you give the objectives of punishment.

2. Write an essay about the principles, policies, procedure for sentencing.

3. **Is capital punishment necessary?** Give your views, opinions and suggestions.

4. Bring out the role of central and state governments in Correctional Administrat

5) Write briefly about the present condition of prisons in India.

6) **Who is a Juvenile?** Describe the role of Juvenile Welfare Board.

7) Write an essay about the Prison Culture.

8) Write in detail about the **"concept and scope of probation"** system in our country.

9) Narrate various laws governing **"special rights to women"**.

10) Write notes on : (a) Legal Aid

(b) Parole

(c) A Women prisons

(d) Protective Home

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